

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 14 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

T.S.C. LEASING, INC., a Corporation,  
and TRIAD SYSTEMS CORPORATION, a  
Corporation

Plaintiffs,

vs.

BOB'S AUTO SUPPLY CORPORATION,  
d/b/a PARTS PLUS, and JAMES R.  
GAYER,

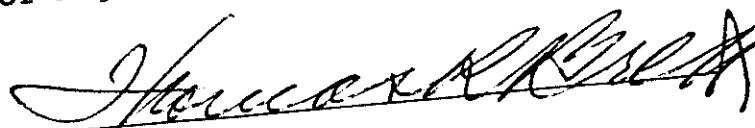
Defendants.

No. 89-C-94-B

J U D G M E N T

In accord with the Order filed this date sustaining the Plaintiffs' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, T.S.C. Leasing, Inc., and against the Defendant, Bob's Auto Supply Corporation d/b/a Parts Plus for the amount of \$29,989.17, plus interest from this date forward at the rate of 7.75 percent per annum, and judgment in favor of Plaintiff Triad Systems Corporation, and against the Defendant, Bob's Auto Supply Corporation d/b/a Parts Plus for the amount of \$2,091.75, plus interest from this date forward at the rate of 7.75 percent per annum. Costs and attorney fees may be awarded upon proper application pursuant to local Rule 6(G).

DATED this 31<sup>st</sup> day of August, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**  
NORTHERN DISTRICT OF OKLAHOMA  
AUG 31 1989

T.S.C. LEASING, INC., a corporation,  
et al,

Plaintiffs,

vs.

BOB'S AUTO SUPPLY CORPORATION,  
d/b/a PARTS PLUS, et al,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 89-C-94-B


ADMINISTRATIVE CLOSING ORDER

JAMES R. GAYER

The Defendant/ having filed **its** petition in bankruptcy and these proceeding being stayed **thereby**, it is hereby ordered that the Clerk administratively **terminate** this action in his records, without prejudice to the rights **of the** parties to reopen the proceedings for good cause shown for the **entry** of any stipulation or order, or for any other purpose required **to** obtain a final determination of the litigation.

IF, within 60 days of a **final** adjudication of the bankruptcy proceedings, the parties have not **reopened** for the purpose of obtaining a final determination herein, **this** action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 31<sup>st</sup> day of AUGUST, 19 89.

  
UNITED STATES DISTRICT JUDGE  
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 31 1989

T.S.C. LEASING, INC., a Corporation,) )  
and TRIAD SYSTEMS CORPORATION, a ) )  
Corporation ) )

Plaintiffs, ) )

vs. ) )

BOB'S AUTO SUPPLY CORPORATION, ) )  
d/b/a PARTS PLUS, and JAMES R. ) )  
GAYER, ) )

Defendants. ) )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 89-C-94-B

ORDER

This matter came before the Court for hearing this 30th day of August, 1989, upon Plaintiffs' Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. None of the Defendants appeared for the hearing; however, the Court notes the Defendant James R. Gayer has filed for protection under the bankruptcy laws. Although Defendant Bob's Auto Supply's Response was due August 4, 1989, it has yet to file either its Response to the Motion for Summary Judgment or an application for an extension of time in which to respond.

Local Rule 15(A) provides that a party opposing a motion for summary judgment shall file its brief in opposition within 15 days. Failure to comply with this Rule will constitute a waiver of the objection, and such failure to comply will constitute a confession of the matters raised by the motion. The undisputed facts in the Motion establish the Defendant Bob's Auto Supply d/b/a Parts Plus entered into a written lease agreement and a Put Agreement with

Plaintiff T.S.C. Leasing, and a service agreement with Triad Systems Corporation and that Defendant has failed to perform under such agreements and is entitled to the relief requested. Defendant's failure to rebut these facts constitutes an admission pursuant to local Rule 15.

It is therefore ORDERED that Plaintiffs' Motion for Summary Judgment be SUSTAINED. It is FURTHER ORDERED the case be administratively closed with regard to Defendant James R. Gayer.

IT IS SO ORDERED, this 31<sup>ST</sup> day of August, 1989.

A handwritten signature in dark ink, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

1989 AUG 31 10:39

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

US WEST FINANCIAL SERVICES,  
INC., a Colorado corporation,

Plaintiff,

vs.

MOORAD MANAGEMENT, INC., an  
Oklahoma corporation, et al.,

Defendants.

No. 88-C-1075-B

DEFAULT JUDGMENT AGAINST MICHAEL J.  
KARATHANOS, LOUIS V. GOROSPE, M.D., INC.  
AND GYRONICS, INC.

There comes before the Court on this 31st day of August, 1989, the Motion for Entry of Default and for Default Judgment against Michael J. Karathanos, Louis V. Gorospe, M.D., Inc., David Duncan and Gyronics, Inc. (the "Motion"). Having reviewed the Motion, and having examined the evidence submitted by the Plaintiff, US West Financial Services, Inc. ("US West"), the Court FINDS, pursuant to Rule 55 of the Federal Rules of Civil Procedure, that the Motion is, in part, made upon good cause shown, and that the same should be, and is, hereby sustained as to Michael J. Karathanos ("Karathanos"), Louis V. Gorospe, M.D., Inc. ("Gorospe"), and Gyronics, Inc. ("Gyronics"). The Motion is overruled as to David Duncan ("Duncan").

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Karathanos was served with Summons and Complaint on August 30, 1988, and was served with Summons and the First Amended Complaint on September 15, 1988. Karathanos has failed to appear, answer or otherwise defend this action, as required by the Federal Rules of Civil Procedure, and is in default.

2. Gorospe was served with Summons and Complaint on August 30, 1988, and was served with Summons and the First Amended Complaint on September 9, 1988. Gorospe has failed to appear, answer, or otherwise defend this action, as required by the Federal Rules of Civil Procedure, and is in default.

3. Gyronics was served with Summons and the Second Amended Complaint on December 14, 1988, by serving the Oklahoma Secretary of State, pursuant to 18 O.S. §1136. Gyronics has failed to appear, answer or otherwise defend this action, as required by the Federal Rules of Civil Procedure, and is in default.

4. The claims of US West against Karathanos, Gorospe and Gyronics are for a sum certain and the entry of a final judgment as to Karathanos, Gorospe and Gyronics will in no way affect the rights of US West or the remaining defendants in this action. There is no just reason to delay entry of final judgment against Karathanos, Gorospe and Gyronics.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that US West Financial Services, Inc. is granted judgment against Michael J. Karathanos for the sum of \$75,000.00, against Louis V.

Gorospe, M.D., Inc. for the sum of \$75,000.00, and against Gyronics, Inc. for the sum of \$375,000.00, together with post-judgment interest from the date of judgment at the rate of 7.75 percent per annum, pursuant to the provisions of 28 U.S.C. §1961; together with pre-judgment interest and attorneys' fees and costs, to be determined at a later date; for all of which let execution issue.

S/ THOMAS R. BRETT

---

United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil Action No. 89-C-605-C

ONE THOUSAND TWO HUNDRED  
DOLLARS (\$1,200.00)  
IN UNITED STATES CURRENCY,

Defendant.

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation For Compromise entered into by and between Kelly Dean Wallace and the United States of America on the 24<sup>th</sup> day of August, 1989, and filed herein, to which Stipulation for Compromise reference is hereby made and is incorporated herein.

It further appearing that no other claims to said property have been filed since such property has been seized and that no other person has any right, title, or interest in the defendant property.

Now, therefore, on motion of Catherine J. Depew, Assistant United State Attorney, and with the consent of Kelly Dean Wallace, it is

FURTHER ORDERED AND DECREED that \$1,000.00 in United States Currency be, and hereby is, condemned as forfeited to the United States of America and shall remain in the custody of the United States Marshal for disposition according to law, and that \$ 200.00 shall be returned to the Claimant, Kelly Dean Wallace, by the United States Marshal.

DATED this 31<sup>st</sup> day of August, 1989.

(Signed) H. Dale Cook

H. DALE COOK, CHIEF JUDGE OF THE  
UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

CJD/cj

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

LAVANNA D. STEWART, now  
Nichols, and MINNIE L. DAVIS,  
and LAVANN D. STEWART, now  
Nichols, as Administratrix of  
the Estate of Elroy Stewart,  
deceased,

Plaintiffs,

-vs-

REPUBLIC-VANGUARD LIFE INSURANCE  
COMPANY,

Defendant.

AUG 31 1989

Jock C. Silver, Clerk  
U.S. DISTRICT COURT

No. 89-C-298-E

ORDER OF JUDGMENT

This matter comes before the Court on this 31<sup>st</sup> day of August, 1989, upon the stipulation of all parties in the above-styled case. The Court, having reviewed the file, considered stipulations of the parties and being duly apprised of the premises, finds as follows:

1. That the Court has subject matter jurisdiction over the present proceedings and in personam jurisdiction over all parties thereto and that venue is properly placed in the United States District Court for the Northern District of Oklahoma.

2. That on or about November 11, 1986, the deceased, Elroy Stewart, husband of the plaintiff, Lavann D. Stewart, now Nichols, entered into a contract of life insurance with the defendant for a policy of insurance in the amount of Four Hundred Thousand and no/100 Dollars (\$400,000.00).

3. That the said policy of insurance provided that in the case of death, the proceeds under the said policy would be payable to plaintiff, Lavanna D. Stewart, now Nichols, or, in the alternative, the contingent beneficiary, plaintiff Minnie L. Davis.

4. That on about June 17, 1987, the insured, Elory Stewart, died in Osage County, State of Oklahoma, as a result of a nonself-inflicted gunshot wound.

5. That Lavanna D. Stewart, now Nichols, and Minnie L. Davis initiated the present action on or about April 12, 1989, seeking the proceeds of the said insurance policy.

6. On or about July 28, 1989, the plaintiffs filed a Second Amended Complaint joining Lavanna D. Stewart, now Nichols, as Administratrix of the Estate of Elroy Stewart, deceased.

7. That on or about August 7, 1989, the defendant filed its Answer and Counterclaim denying any breach of the said insurance contract and, pursuant to the Counterclaim, sought a Court order requiring the plaintiffs to interplead their respective claims and adjudge which named plaintiff, if any, is entitled to the proceeds, allow the defendant to deposit the sum of Four Hundred Thousand and no/100 Dollars (\$400,000.00) with the Court Clerk and discharge the defendant from all liability in the premises.

8. That on or about August 17, 1989, the plaintiff, Lavanna D. Stewart, now Nichols, as Administratrix of the Estate of Elroy Stewart, filed a Renunciation and Disclaimer on behalf of the said Estate and on behalf of the heirs at law of the said Estate.

That said Renunciation and Disclaimer renounced and declined any and all rights, benefits or interest in the said life insurance policy.

9. Thereafter, Lavanna D. Stewart, now Nichols, individually, filed a Renunciation and Disclaimer renouncing and declining to accept any and all rights, benefits or interest in the said life insurance policy.

10. That as a result of the said Disclaimers of Lavanna D. Stewart, now Nichols, individually, and Lavanna D. Stewart, now Nichols, as Administratrix of the Estate of Elroy Stewart, deceased, the only claimant to the said funds is the contingent beneficiary, Minnie L. Davis.

11. That all due and proper parties to this action have been joined, and no further contestants to the said funds have appeared.

12. That the defendant has heretofore tendered the proceeds of the said policy, along with an Order to deposit the said sum into Court and, therefore, is not in breach of the said policy of insurance. Further, the proceeds of the policy were paid into the Court in an interest bearing account pursuant to Order of the Court dated August 23, 1989.

13. That, as a result of the above-referenced Disclaimers, the contingent beneficiary and plaintiff, Minnie L. Davis, is entitled to the proceeds of the said policy of insurance.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the findings of fact, as set forth above, are incorporated herein and made part of this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiffs' Complaint is denied and judgment is entered for the defendant on that said action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of the defendant on the defendant's Complaint for Interpleader and that the defendant pay into the Court the proceeds of the said insurance policy in the amount of Four Hundred Thousand and no/100 Dollars (\$400,000.00) which has heretofore occurred on August 23, 1989. That as a result of the defendant having paid said funds into the Court, the defendant is fully, finally and completely discharged of any and all obligation or liability arising under the said policy of insurance.

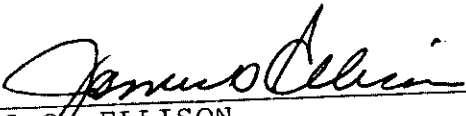
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as a result of the renunciation and Disclaimers heretofore filed in the above-styled action by Lavanna D. Stewart, now Nichols, individually, and by Lavanna D. Stewart, now Nichols, as Administratrix of the Estate of Elory Stewart, deceased, on behalf of the Estate and its heirs at law, the only remaining claimant to the said Four Hundred Thousand no/100 Dollars (\$400,000.00) proceeds of the life insurance, plaintiff Minnie L. Davis, is hereby entitled to the said proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the United States Court Clerk for the Northern District of Oklahoma is hereby directed forthwith to pay to the plaintiff, Minnie L. Davis, and her attorney, Don Pearson, the said Four Hundred Thousand and no/100 Dollars (\$400,000.00) and any accrued interest while on deposit with the Court Clerk. Upon transmittal of said funds and  
/ jo 9/5/89


any accrued interest, the said Clerk is relieved of any and all liability arising from this Order.

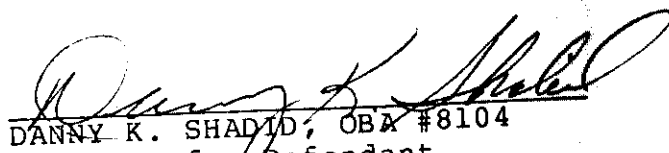
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all parties shall bear their own costs and attorney's fees in prosecution and/or defense of this matter.

IT IS SO ORDERED.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
DON PEARSON, OBA #7004  
Attorney for Plaintiffs

  
DANNY K. SHADID, OBA #8104  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
40630 1983

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

RICHARD J. SMITH,  
Plaintiff,

vs.

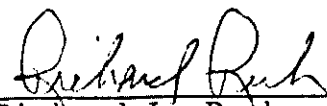
No. 88-C-620-E ✓

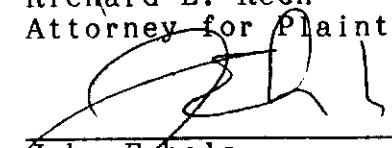
THE CITY OF TULSA,  
C. V. MILLER  
S. L. MERCHANT,  
D.A. BROWN,  
D. L. LARSON, and  
JOHN DOE,

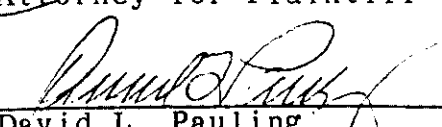
Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, by and through his attorneys of record, Richard L. Reeh and John Echols and the defendants, C. V. Miller, S.L. Merchant, D. A. Brown and D. L. Larson by and through their attorney of record, David L. Pauling, and stipulate to the dismissal of the captioned action with prejudice insofar as it relates to C. V. Miller, S. L. Merchant, D. A. Brown and D. L. Larson pursuant to the authorization contained at F.R.C.P. 41, paragraph (A) (1) (ii), with prejudice to plaintiff's right to hereafter reinstate such action as to said defendants, with cost assessed to plaintiff.

  
Richard L. Reeh  
Attorney for Plaintiff

  
John Echols  
Attorney for Plaintiff

  
David L. Pauling  
Attorney for all defendants

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

TULSA ELECTRICAL INDUSTRY  
RECEIVING TRUST, IBEW-NECA  
SOUTHWESTERN HEALTH & BENEFIT  
FUND, INTERNATIONAL BROTHER-  
HOOD OF ELECTRICAL WORKERS  
LOCAL UNION 584 and  
DARRELL PYEATT,

Plaintiffs,

vs.

PINNEO ELECTRIC, INC.,

Defendant.

FILED

AUG 30 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 88-C-305 E

JOURNAL ENTRY OF JUDGMENT

The decision of the U.S. Magistrate having heretofore been entered in the above-captioned matter on the 16th day of May, 1989, awarding judgment for the Plaintiff for delinquent contributions by the Defendant, interest, costs and attorney's fees and the parties heretofore having stipulated that the amounts of contributions were not in controversy the Magistrate finds the following sums and amounts are due by the Defendant, Pinneo Electric, Inc., to the Plaintiffs as hereinafter set out for employee Darrell Pyeatte the sum of \$15,246.99 and for the Employee Tom Uva, \$8,847.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs jointly have judgment against the Defendant, Pinneo Electric, Inc., for the sum of \$24,093.00. The Plaintiffs jointly have judgment against the Defendant, Pinneo Electric, Inc., for their costs the sum of \$535.15.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the

LAW OFFICES  
UNGERMAN  
& IOLA

RIVERBRIDGE OFFICE PARK  
1323 EAST 71ST  
SUITE 308

P.O. BOX 781917  
TULSA, OKLAHOMA  
74178-1917

Plaintiff jointly have judgment against the Defendant, Pinneo Electric, Inc. for the sum of \$2,711.25 as attorney's fees.

Done this 29 day of August, 1989.

S/John L. Wagner

U.S. Magistrate

~~U.S. DISTRICT JUDGE~~

APPROVED AS TO FORM:

UNGERMAN & IOLA

By 

Thomas F. Birmingham  
1323 East 71st Street  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(918) 495-0550

Attorneys for Plaintiffs

SANDLIN & PAYNE

By 

R. Forney Sandlin  
330 North 4th Street  
P. O. Box 1934  
Muskogee, Oklahoma 74402-1934  
(918) 683-5513

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 31 1989

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CHERYL A. MILLER,  
C 20 793 300

Defendant,

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL NUMBER 89-C-498 E

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

UNITED STATES OF AMERICA

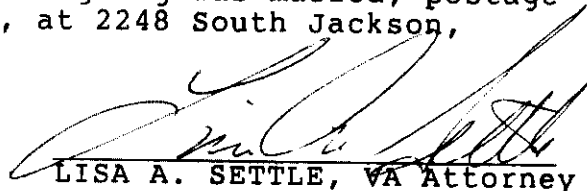
Herbert N. Standeven  
District Counsel  
Veterans Administration  
125 South Main Street  
Muskogee, OK 74401  
Phone: (918) 687-2191

By:

  
LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: CHERYL A. MILLER, at 2248 South Jackson, Tulsa, OK 74107.

  
LISA A. SETTLE, VA Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

NO 88 1003

CLERK OF COURT

RANDY WALLIS, et al.,  
Plaintiffs,

vs.

QUINTON R. DODD, et al.,  
Defendants.

No. 88-C-1350-C

ORDER

Now before the Court for its consideration is the supplemental motion of the Federal Savings & Loan Insurance Corporation (FSLIC) to dismiss. Plaintiffs have not responded to the supplemental motion.

Plaintiffs brought claims against Phoenix Federal Savings and Loan Association, which institution has now been declared insolvent. The FSLIC was appointed receiver. In support of the present motion, the FSLIC points to a determination by the Federal Home Loan Bank Board that Phoenix is insolvent, has no funds to satisfy a claim and never will have such funds. The FSLIC argues that the plaintiffs' tort claim should be dismissed as moot in that the Court cannot grant any effectual relief, or alternatively that it should be dismissed for prudential reasons (i.e., as a waste of judicial resources to adjudicate such a claim).

The Court concludes that, as it is impossible for the Court to grant effectual relief, the claims should be dismissed. Cf.

Central States, S.E. & S.W. Areas Pension Fund v. Central Transp., Inc., 841 F.2d 92, 95-96 (4th Cir. 1988) and Park County Resource Council, Inc. v. Dept. of Agric., 817 F.2d 609, 614 (10th Cir. 1987). Many of the district court decisions overruling the FSLIC's motion have cited Ratner v. Sioux Natural Gas Corp., 770 F.2d 512 (5th Cir. 1985) which holds that the "mere possibility" that a judgment debtor lacks the means to satisfy its monetary liability is insufficient to dismiss a claim. This Court's holding is not to the contrary. It is not a mere possibility, but a certainty that Phoenix has no assets and will not gain any in the future. Thus, the Court believes that dismissal is warranted.

The claims being dismissed are direct claims by plaintiffs seeking to recover from Phoenix. This is not a case in which the FSLIC seeks recovery from a defendant and the defendant counterclaims, seeking affirmative recovery or setoff as to FSLIC's claims. In the latter instance, the analysis employed above might not be applicable. That question is not before the Court.

It is the Order of the Court that the motion of the Federal Savings & Loan Insurance Corporation to dismiss is hereby GRANTED.

IT IS SO ORDERED this 29<sup>th</sup> day of August, 1989.

  
H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

R & R CARPET & TILE COMPANY,  
a corporation,

Plaintiff,

vs.

DAL-TILE CORPORATION,

Defendant and  
Third Party Plaintiff,

vs.

BTO BARTOLONI S.P.A.

Third Party Defendant.

AUG 30 1989

U.S. DISTRICT COURT

No. 89-C-153-B

**ORDER SUSTAINING MOTION TO DISMISS  
FOR WANT OF IN PERSONAM JURISDICTION**

The Third Party Defendant BTO Bartoloni S.P.A.'s Motion to Dismiss for lack of *in personam* jurisdiction is before the Court for decision. Following a review of the relevant evidentiary matter and applicable legal authority, the Court concludes that Third Party Defendant BTO Bartoloni S.P.A., did not have sufficient minimum contacts with the State of Oklahoma to support *in personam* jurisdiction against said Defendant.' World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559 (1980); Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987); Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985); and Rambo v. American

9

If an action is maintainable against the Third Party Defendant BTO Bartoloni S.P.A. by the Defendant-Third Party Plaintiff Dal-Tile Corporation in the United States, such is most probably properly maintained in the Northern District of the State of Texas, U.S.A.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 30 1989

CHARLES H. WARE and MARIAN  
WARE

Plaintiffs,

vs.

ORKIN EXTERMINATING COMPANY,  
INC., d/b/a ORKIN PEST  
CONTROL,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. ~~88-C-682-E~~

89-C-112-E

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs Charles H. Ware and Marian Ware, by and through their counsel, Stephen B. Riley, and the Defendant, Orkin Exterminating Company, Inc., by and through their counsel Richard A. Paschal, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and hereby stipulate that this case be dismissed with prejudice to the bringing of the another action. It is stipulated by the parties that they shall each bear their own attorney's fees and costs.

DATED this 29<sup>th</sup> day of August, 1989.

CHAPEL, RIGGS, ABNEY, NEAL & TURPEN

By Stephen B. Riley  
Stephen B. Riley #7589  
502 West Sixth Street  
Tulsa, Oklahoma 74119-1010  
(918) 587-3161

ATTORNEYS FOR PLAINTIFFS,  
CHARLES H. WARE AND MARIAN WARE

COMFORT, LIPE & GREEN, P.C.

BY Richard A. Paschal  
Richard A. Paschal #6927  
2100 Mid-Continent Tower  
401 South Boston  
Tulsa, Oklahoma 74103  
(918) 599-1907

ATTORNEYS FOR DEFENDANT,  
ORKIN EXTERMINATING COMPANY, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANITA LOUISE HOWERTON, individually,  
and as personal Representative of  
the heirs and Estate of Walter Allen  
Howerton, Deceased,

Plaintiff

vs.

FIBREBOARD CORPORATION, et al.

Defendants.

NO. 87-C-353-C

AUG 29 1989


Jack C. Silver, Clerk  
U.S. DISTRICT COURT

STIPULATION FOR ORDER DISMISSING ACTION

Plaintiff, Anita Louis Howerton, individually and as personal Representative of the heirs and Estate of Walter Allen Howerton, Deceased, and the Defendant, Owens-Illinois, Inc., requests that this Court enter an Order dismissing the Plaintiff's action with prejudice, pursuant to Federal Rules of Civil Procedure 41(a)(1)(ii). These parties request this dismissal with prejudice because the parties have reached a settlement agreement in the above entitled cause.

WHEREFORE, the parties request the above entitled action be dismissed without cost to the parties and without prejudice as to the Defendant Owens-Illinois Inc.

Stipulated:

  
MARK IOLA  
Ungerma & Iola  
P. O. Box 701917  
Tulsa, Oklahoma 74170  
Attorneys for Plaintiff

*John F. McCormick, Jr.*

John F. McCormick, Jr. OBA #5915  
Wm. Gregory James, OBA #4620  
PRAY, WALKER, JACKMAN, WILLIAMSON  
& MARLAR  
900 Oneok Plaza  
Tulsa, Oklahoma 74103  
(918) 584-4136  
Attorneys for Defendants  
Owens-Illinois, Inc.

IT IS SO ORDERED THIS 28 DAY OF AUGUST, 1989.

*[Signature]*  
U.S. DISTRICT JUDGE

FILED

AUG 24 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN GUARANTY INVESTMENT  
CORPORATION,

Plaintiff,

v.

MIDAMERICA FEDERAL SAVINGS AND  
LOAN ASSOCIATION and STATE  
FEDERAL SAVINGS AND LOAN  
ASSOCIATION,

Defendants.

No. 89-C-0014-C

STIPULATED DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereby agree that all claims of Plaintiff, American Guaranty Investment Corporation ("AGIC") against Defendant The Federal Savings and Loan Insurance Corporation ("FSLIC") as Receiver for MidAmerica Federal Savings and Loan Association, are hereby dismissed with prejudice. The parties further agree that all counterclaims of Defendant Local America Bank of Tulsa, F.S.B., as assignee of MidAmerica Federal Savings and Loan Association, against Plaintiff, AGIC, are dismissed with prejudice.

All parties are to bear their own costs and attorneys' fees associated with this action.

**BIRAM & KAISER**

By: 

Curtis J. Biram  
125 W. 15th  
Pratt Building, 6th Floor  
Tulsa, Oklahoma 74119  
(918) 584-0719

**ATTORNEYS FOR AMERICAN GUARANTY  
INVESTMENT CORPORATION**

**HUFFMAN, ARRINGTON, KIHLE  
GABERINO & DUNN**

John A. Gaberino, Jr.  
Larry D. Henry  
Caroline B. Benediktson  
Barry K. Beasley

By: 

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(918) 585-8141

**ATTORNEYS FOR THE FEDERAL SAVINGS  
AND LOAN INSURANCE CORPORATION  
AS RECEIVER FOR MIDAMERICA  
FEDERAL SAVINGS AND LOAN  
ASSOCIATION**

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

Richard P. Hix  
L. Dru McQueen

By: R. H. P. H.

1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

ATTORNEYS FOR LOCAL AMERICA BANK  
OF TULSA, F.S.B.

**CERTIFICATE OF MAILING**

I do hereby certify that I mailed a true, correct and exact  
copy of the above and foregoing instrument to:

John D. Clayman, Esquire  
BARKLEY, RODOLF, SILVA,  
McCARTHY & RODOLF  
401 S. Boston, Suite 2700  
Tulsa, Oklahoma 74103

with proper postage thereon fully prepaid.

Richard P. Hix

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE 28 1989  
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

AGNES L. LAZARUS,

Plaintiff,

vs.

No. 88-C-1322-B ✓

EMBASSY SUITES, INC., a Delaware  
corporation,

Defendant and Third  
Party Plaintiff,


ART WILLIAMS, JR.,

Third Party Defendant.


ORDER OF DISMISSAL

NOW on this 28<sup>th</sup> day of Aug., 1989, upon the written application of the Third Party Plaintiff, Embassy Suites, Inc., and the Third Party Defendant, Art Williams, Jr., for a Dismissal With Prejudice of the Third Party Complaint in the case of Lazarus v. Embassy, et al., and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement agreement believed to resolve all claims involved in the Third Party Complaint and have requested the court to dismiss said Third Party Complaint with prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the parties, and that said Third Party Complaint should be dismissed pursuant to said Application.

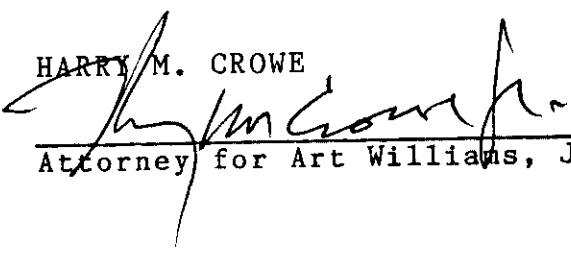
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that all causes of action in the Third Party Complaint herein, be and the same hereby are dismissed with prejudice to any future action

  
JUDGE OF THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

SCOTT D. CANNON

  
Attorney for Embassy Suites, Inc.

HARRY M. CROWE

  
Attorney for Art Williams, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 28 1989

JOSEPH ARTHUR CARBRAY,

Petitioner,

v.

RON CHAMPION, Warden C.C.C.,  
and The Attorney General of  
the State of Oklahoma,

Respondents.

89-C-363-B ✓

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

Petitioner Joseph Arthur Carbray's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 and respondents' Response are now before the Court for determination. Petitioner is incarcerated in the Conner Correctional Center, Hominy, Oklahoma, following conviction in Tulsa County District Court, Case No. CRF-74-1289, of Assault with a Deadly Weapon After Former Conviction of a Felony.

Petitioner filed a direct appeal from his conviction, which was affirmed by the Oklahoma Court of Criminal Appeals and published at Carbray v. State, 545 P.2d 813 (Okla. Cr. 1976). The Court of Criminal Appeals modified the sentence from one hundred ninety-nine (199) to seventy-five (75) years imprisonment.

Petitioner also filed an application for relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. §1080 et seq. The petition was denied by the Tulsa County District Court, and such denial was affirmed by the Court of Criminal Appeals in Case No. PC-89-79.

After exhausting the available state remedies, petitioner is entitled to the Court's consideration of his petition. Having reviewed the pleadings and applicable law, the Court finds as follows.

Respondents allege that the Attorney General of the State of Oklahoma should be dismissed because he is not a proper party respondent pursuant to Rule 2(a) of the Rules Governing Section 2254 Cases.<sup>1</sup>

<sup>1</sup> Rule 2(a), regarding applicants in present custody, reads as follows: If the applicant is presently in custody pursuant to the state judgment in question, the application shall be in the form of a petition for a writ of habeas corpus in which the state officer having custody of the applicant shall be named as respondent.

Under Rule 2(a) of the Rules Governing Section 2254 Cases, the state officer having custody of the applicant should be named as respondent. When a habeas corpus petitioner seeks relief from state custody, he must direct his petition against those state officials holding him in restraint. Moore v. United States, 339 F.2d 448 (10th Cir. 1964). However, petitioner's pro se pleadings will be held to a less stringent standard than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

In Spradling v. Maynard, 527 F.Supp. 398, 404 (1981), the court held that the Attorney General of the State of Oklahoma is not a proper party respondent in a habeas corpus action brought by a state prisoner already in custody.<sup>2</sup> The court stated:

The Attorney General of Oklahoma is simply legal counsel for the Oklahoma Department of Corrections and its employees. He is not the custodian of any prisoner incarcerated in any Oklahoma correctional institution. In the circumstances, he could not respond to a writ of habeas corpus on behalf of a prisoner even if one was issued to him.

Id.

The court is aware that the model form for use by petitioners making § 2254 habeas corpus applications includes the state attorney general as an additional respondent. Practically speaking, the Attorney General of Oklahoma, as legal counsel for the Oklahoma Department of Corrections and its employees, benefits by receiving immediate notice of a habeas corpus action filed when named as an additional respondent. However, the court concludes that the respondents' request for dismissal of the Attorney General of the State of Oklahoma as a party respondent should be granted pursuant to Rule 2(a).

For his first allegation of constitutional error, petitioner claims that invalid juvenile and later convictions were used as enhancement. Page 16 of the Remanded preliminary Hearing transcript reveals that petitioner's 1957 juvenile conviction was stricken from the second page of the Information. Therefore, petitioner's allegation that the jury was allowed to hear the juvenile conviction is unfounded.

---

<sup>2</sup> The Magistrate notes that Rule 2(b) of the Rules Governing Section 2254 Cases in the United States District Courts pertaining to applicants subject to future custody requires the joinder of the state Attorney General: "If the applicant is not presently in custody pursuant to the state judgment against which he seeks relief but may be subject to such custody in the future, the application shall be in the form of a petition for a writ of habeas corpus with an added prayer for appropriate relief against the judgment which he seeks to attack. In such a case the officer having present custody of the applicant and the attorney general of the state in which the judgment which he seeks to attack was entered shall each be named as respondents."

The earliest conviction used for enhancement purposes was Case No. 18293 out of Tulsa County, for which petitioner was convicted on 12/18/59, when he was eighteen (18) years and two (2) months old. If the 1959 conviction had also been eliminated, petitioner had three other felony convictions which were used for enhancement purposes. The federal courts have found that where there are other prior convictions that could be utilized to enhance a sentence, use of an invalid conviction should be considered harmless error. Beavers v. Alford, 582 F.Supp. 1504 (W.D.Okla. 1984).

Since petitioner's juvenile conviction was stricken from the Information prior to trial, and where there were at least three other convictions which could have been used for enhancement, there was no constitutional error warranting a disruption of petitioner's sentence.

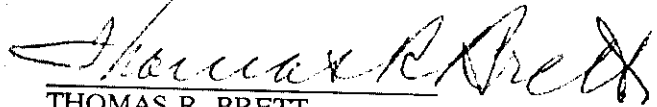
Petitioner's second proposition of constitutional error alleges that certain comments made by the prosecutor during the second stage of his trial were so prejudicial that the petitioner was denied a fair trial. Prejudicial statements made by the prosecutor after a finding of guilt and during the penalty phase of a bifurcated trial do not warrant reversal, but do justify modification of sentence where the jury was induced to return an excessive verdict. See Jones v. State, 554 P.2d 830 (Okla. Cr. 1976). In petitioner's direct appeal, the Court of Criminal Appeals found that the prosecutor's comments referring to Oklahoma's pardon and parole policies contributed to the jury's assessment of punishment. The Court then modified petitioner's sentence from one hundred ninety-nine (199) years to seventy-five (75) years imprisonment.

A prosecutor's comments at trial are not a basis for federal habeas corpus relief unless the trial was rendered so fundamentally unfair as to deny due process. Darden v. Wainwright, 699 F.2d 1031, 1034 (11th Cir. 1983). The prosecutor's comments here were mild compared to those of the prosecutor in Darden, in which the Eleventh Circuit found that the comments did not deny Darden a fundamentally fair trial. "A defect of constitutional proportions is not to be found in any but egregious cases." Darden, 699 F.2d at 1036.

The prosecutor's comments regarding Oklahoma's pardon and parole policies during the second stage of trial did not rise to the level of causing a fundamentally unfair trial, and any error resulting from the prosecutor's remarks was cured by the Appellate Court's modification of petitioner's sentence.

The court concludes that the petitioner **had** not demonstrated any court error that deprived him of fundamental rights guaranteed by the United States Constitution. It is therefore ordered that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. 2254 is denied.

Dated this 20 day of August, 1989.

A handwritten signature in dark ink, appearing to read "Thomas R. Brett", with a stylized flourish at the end.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

8008-007  
8/3/89

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 28 1989

ANITA LOUISE HOWERTON, individually  
and as personal Representative of  
the heirs and Estate of Walter Allen  
Howerton, Deceased,

Plaintiff,

vs.

FIBREBOARD CORPORATION, et al.,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

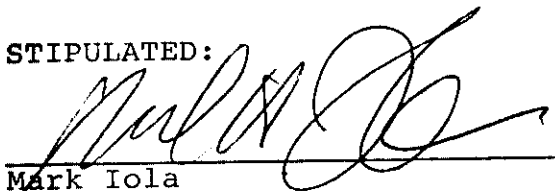
No. 87-C-353-C

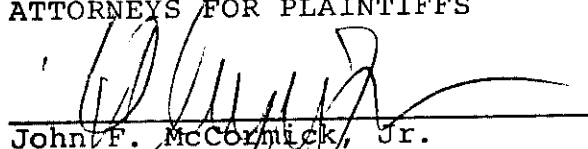
STIPULATION FOR ORDER DISMISSING ACTION

Plaintiff, Anita Louise Howerton, individually and as personal Representative of the heirs and Estate of Walter Allen Howerton, Deceased, and the Defendant, Pittsburgh Corning Corporation, requests that this Court enter an Order dismissing the Plaintiff's action with prejudice, pursuant to Federal Rules of Civil Procedure 41(a)(1)(ii). These parties request this dismissal with prejudice because the parties have reached a settlement agreement in the above entitled cause.

WHEREFORE, these parties request that the above-entitled action be dismissed without cost to the parties and with prejudice to the Plaintiff.

STIPULATED:

  
Mark Iola  
Ungerma & Iola  
P. O. Box 701917  
Tulsa, Oklahoma 74170  
ATTORNEYS FOR PLAINTIFFS

  
John F. McCormick, Jr.  
Wm. Gregory James  
Pray, Walker, Jackman,  
Williamson & Marlar  
900 Oneok Plaza  
Tulsa, Oklahoma 74103  
(918) 584-4136  
ATTORNEYS FOR DEFENDANTS  
PITTSBURGH CORNING CORPORATION

IT IS SO ORDERED THIS 28 DAY OF aug, 1989.

  
U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MIDAMERICA FEDERAL SAVINGS AND  
LOAN ASSOCIATION,

Plaintiff,

vs.

No. 88-C-1341-B ✓

SHERIDAN PROPERTIES, INC.; a  
Tennessee corporation; ROBERT J.  
PHILLIPS; WANDA N. PHILLIPS;  
JUSTIN LYON; RAYMOND M. BRIGGS  
and HELEN P. BRIGGS; ERWIN LEE  
KING and EILEEN L. KING; JAMES O.  
SHOEMAKER; MELANIE SHOEMAKER;  
THOMAS C. HARMON; PANTEGO  
PROPERTIES, INC., an Oklahoma  
corporation; and CARPETLAND,  
INC.,

Defendants,

and

VIRGYL D. JOHNSON and GREEN  
COUNTRY APPRAISAL SERVICE, INC.,  
an Oklahoma corporation,

Third-Party Defendants.

FILED

AUG 23 1989

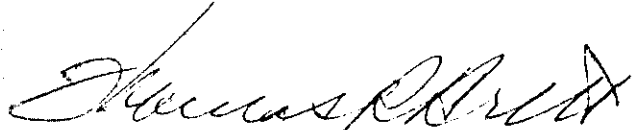
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER VACATING JUDGMENT

The Court, having considered the Motion to Vacate Judgment of Helen P. Briggs, and noting the agreement of the owner of all of the assets of MidAmerica Federal Savings and Loan Association, Local America Bank, and noting that no party to the case has objected within fifteen days following filing of the Motion to Vacate Judgment;


IT IS ORDERED that the judgment previously granted in this case in personam against Helen P. Briggs is vacated and held for naught, but the judgment against her in rem for the property at issue in this litigation remains undisturbed.

Done this 28 day of August, 1989.



THOMAS R. BRETT  
U.S. DISTRICT JUDGE

AGREED TO AS TO FORM AND CONTENT:



LEWIS N. CARTER  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
Counsel for Local America Bank



R. THOMAS SEYMOUR  
SHERRY N. TAYLOR  
Counsel for Helen P. Briggs

*entered*

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

DON KERR,

Plaintiff,

vs.

AMPAD CORPORATION,

Defendant.

No. 88-C-710-C

**F I L E D**

**AUG 25 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

**ORDER**

Before the Court is the motion of plaintiff Don Kerr for new trial. A jury verdict was entered in this case on July 25, 1989 finding in favor of the defendant Ampad Corporation.

First, Kerr argues that the Court erred in not submitting to the jury his requested instruction on the breach of contract claim, and his requested instruction defining "procuring cause".

Plaintiff has waived objections to the instructions submitted to the jury by his failure to object before the jury retired to consider its verdict. See Rule 51 F.R.Cv.P.

Next Kerr argues that the Court erred in rejecting his requested instruction defining "procuring cause".

As stated at the conference on instructions, the definition contained in Leach Corp. v. Turner, 390 P.2d 515 (Okla. 1964) is not appropriate under the evidence of this case. The Leach definition of procuring cause does not put any end to the time in which plaintiff was entitled to commissions.

65

Last, Kerr argues that the jury verdict was against the weight of the evidence.

It is not the function of the Court to weigh the evidence and substitute its judgment for that of the jury on issues of fact. There is sufficient evidence to support the jury verdict.

Therefore, premises considered, it is the Order of the Court that the motion of plaintiff for new trial is hereby DENIED.

IT IS SO ORDERED this 24 day of August, 1989.



H. DALE COOK

Chief Judge, U. S. District Court

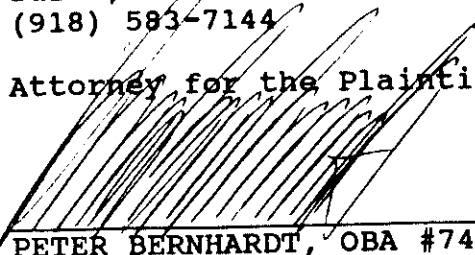
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:



C. JACK MANER, OBA #5657  
100 Center Plaza, Suite A  
Tulsa, Oklahoma 74119  
(918) 583-7144

Attorney for the Plaintiff

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAVID A. HOWARD,  
Plaintiff,

vs.

AIRCRAFT CYLINDERS OF AMERICA,  
INC., et al.,  
Defendants.

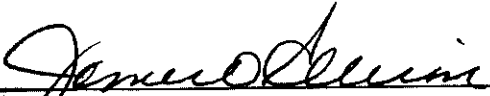
No. 88-C-483-E ✓

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 24<sup>th</sup> day of August, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

PRINCIPAL MUTUAL LIFE INSURANCE  
COMPANY,

Plaintiff,

vs.

Case No. 89-C-313 E

The Estate of MARY L. WASHBURN,  
deceased, TERESA E. GLASBY,  
individually and as personal  
representative of the Estate of  
MARY L. WASHBURN, and the known  
and unknown Heirs at Law of  
MARY L. WASHBURN, deceased,

Defendants.

**TIME STUDY CASE**  
Record Time Spent by Judge or Magistrate

AGREED JOURNAL ENTRY OF JUDGMENT

COMES before the Court, this 23 day of Aug, 1989 consideration of this matter by and between Plaintiff, Principal Mutual Life Insurance Company ("Principal Mutual"), and Defendants, the Estate of Mary L. Washburn, and Teresa E. Glasby and Jeffrey Scott Washburn, the Heirs at Law of Mary L. Washburn, deceased. Upon agreement of the parties hereto, the Court finds as follows:

1. The Plaintiff, Principal Mutual, is an insurance company organized under the laws of the State of Iowa and licensed under the laws of the State of Oklahoma as a foreign insurance company.

2. Defendant Teresa E. Glasby, decedent's daughter and Heir at Law, is a citizen and resident of Cleveland County, Oklahoma. The decedent, Mary L. Washburn was a citizen and resident of Tulsa County, Oklahoma. Jeffrey Scott Washburn, decedent's son and Heir at Law is a citizen and resident of Bexar County, Texas.

3. This action for declaratory judgment is brought pursuant to 28 U.S.C. §§ 2201 and 2202, for the purpose of determining the rights and other legal relations of the named parties to this case of actual controversy.

4. The Court finds it has subject matter jurisdiction under 28 U.S.C. § 1331, as this action concerns the rescission of an insurance policy regulated under the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("ERISA"), as well as under 28 U.S.C. § 1332, as this action is between citizens of different states and the amount in controversy is in excess of \$10,000, exclusive of interest and costs.

5. The Court finds it has jurisdiction over the parties hereto. Venue in this Court is proper under 28 U.S.C. § 1391, as the claim arose in whole or in part in this judicial district, the Northern District of Oklahoma.

6. On or about March 30, 1988, the deceased, Mary L. Washburn ("Washburn"), applied to Principal Mutual for health and life insurance under the Planned Employee Program of her employer, Tulsa Ballet Theatre, Group Policy No. L-37842. The Planned Employee Program is a plan regulated under ERISA. A copy of Washburn's Application to Principal Mutual's Planned Employee Program ("Application") is attached hereto as Exhibit "A" and made a part hereto.

7. Coverage for Washburn was founded upon and issued in consideration of and in reliance upon the statements made by Washburn in her written Application for insurance. Washburn's Application contained the following questions concerning Washburn's health history and she answered the questions in writing and made her answers a part of the Application as follows:

- |     |  |     |
|-----|--|-----|
| 1.  | Is anyone getting or thinking about medical treatment or taking any medicine, drugs, pills, shots, etc.? | No. |
| ... |  |     |
| 3.  | Has anyone ever had chest pain, heart trouble, heart attack, heart murmur or high blood pressure?        | No. |

4. Has anyone ever had diabetes, urinary problems, arthritis, ulcers, pneumonia or disorder of the lymph system? No.

...

6. Has anyone ever had surgery or been hospitalized? Yes.

7. Has anyone been to or consulted a doctor, chiropractor or any medical specialist or had blood tests or other diagnostic tests in the last 5 years? No.

...

8. Following these questions the Application has a section requiring full details regarding any questions answered "Yes". Washburn's responses in that section with respect to her "Yes" answer to Question 6 on the Application omitted several surgeries she had undergone.

9. Washburn's answers to Questions 1, 3, 4, 6 and 7 on the Application were false, incomplete and misleading because in truth and in fact, at various times prior to her Application and at the time of her Application, Washburn had numerous medical problems and treatments, including surgeries and doctor's office visits, and had been taking medication and other receiving medical treatment, which she did not disclose in her Application.

10. The Application that Washburn signed contained the following provision:

"I represent that to the best of my knowledge and belief all statements and answers made on this form are true, complete and correct. They shall be a part of this request for insurance under the above Planned Employee Program. I understand that omissions or misstatements regarding medical history could cause an otherwise valid claim to be denied and/or void the insurance if issued. . . ."

11. The false statements and omissions made by Washburn in her Application were willfully false, were fraudulently made, affected materially the risk and hazard

assumed by Principal Mutual and induced Principal Mutual to issue coverage for Washburn. Coverage for Washburn became effective May 1, 1988. Defendant Teresa Glasby was named as beneficiary under the life insurance coverage for Washburn.

12. But for these false statements and omissions, and if Washburn had truthfully answered all questions on the Application and truthfully disclosed her medical history, Principal Mutual would not have accepted her for coverage.

13. In April and May 1988, Washburn received medical treatment for abdominal pain. Washburn was thereafter hospitalized and surgery was performed on or about May 16, 1988. She was again hospitalized in June 1988 and further surgery was performed. Each of the conditions for which Washburn was hospitalized pre-existed her Application for insurance coverage. On July 2, 1988 Washburn died.

14. Principal Mutual discovered the foregoing false statements and omissions by Washburn, and the pre-existing nature of her condition, during inquiries relating to medical expense claims submitted by Washburn or by her daughter, Defendant Teresa E. Glasby.

15. On November 7, 1988, Principal Mutual notified Defendant Teresa E. Glasby, by letter, that it was rescinding coverage and crediting the total premium paid because of Washburn's false and fraudulent misrepresentations and omissions concerning Washburn's medical history.

16. Washburn's only Heirs at Law are Teresa E. Glasby and Jeffrey Scott Washburn. Teresa E. Glasby and Jeffrey Scott Washburn agree with Principal Mutual that all insurance coverage relating to Mary L. Washburn under Group Policy No. L-37842 should be rescinded, and the Court hereby rescinds said coverage as void ab initio, for the reasons set forth above. Judgment is hereby entered in favor of Principal Mutual.

17. Teresa E. Glasby, Jeffrey Scott Washburn, and the Estate of Mary L. Washburn are hereby restrained from alleging the validity of any insurance coverage relating to Mary L. Washburn under the insurance policy described above. The parties

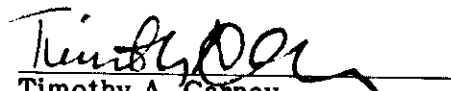
will be responsible for their own attorneys fees and costs.

18. Teresa E. Glasby and Jeffrey Scott Washburn have been advised and encouraged to consult with legal counsel regarding the matters raised herein and knowingly and voluntarily approve this Journal Entry without retaining counsel.

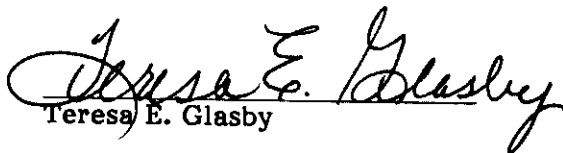
 JAMES D. BLUM

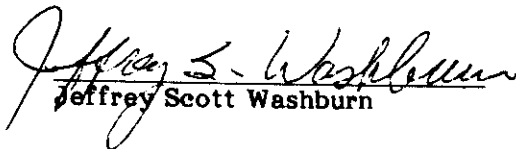
UNITED STATES DISTRICT JUDGE

AGREED TO AND APPROVED:

  
Timothy A. Carney  
GABLE & GOTWALS, INC.  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

Attorneys for Plaintiff

  
Teresa E. Glasby

  
Jeffrey Scott Washburn

|  |  |   |                                  |  |
|--|--|---|----------------------------------|--|
| Full Name of Member (please print)<br><b>Mary Lea Washburn</b>   |  | Sex<br><input type="checkbox"/> M <input checked="" type="checkbox"/> F   | Date of Birth<br><b>12-27-38</b> | Your place of Birth<br><b>Stigler, OK</b>  |
| Residence Address (Street, City, State, & Zip)<br><b>8307 S. 77th E. Ave. #1150, Tulsa, Ok 74133</b>   |  |   |                                  | Member Soc. Sec. #<br><b>446-38-0541</b>   |
| Your Employer<br><b>Tulsa Ballet Theatre</b>   | Date of Full-Time Employment<br><b>2/29/88</b>   | Job Position held<br><b>Executive Secretary</b>   |                                  | Present salary excluding overtime and bonus:<br><b>\$ 15,500.</b> per <input checked="" type="checkbox"/> Yr <input type="checkbox"/> Mo <input type="checkbox"/> Wk <input type="checkbox"/> Hr |
| Are you married? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes<br>If "Yes,"<br>Give date _____   | Do you have dependent children?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Insurance is to cover: <input checked="" type="checkbox"/> Myself only<br><input type="checkbox"/> Myself and my eligible dependents<br>NOTE: If waiving coverage - see reverse of original |                                  | Do you work at least 30 hours per week at your place of employment?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |
| Do you have stepchildren? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No<br>foster children? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, complete form GP 15938 |  | Do you have developmentally disabled/handicapped children?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, complete form GP 9286.                            |                                  |  |
| Life Insurance Beneficiary, subject to change: <b>Teresa E. Glasby</b>   |  |   |                                  | Relationship to you: <b>Daughter</b>   |

Answer the following if less than 10 Members are enrolled or if applicant is a late entrant.

|  |   |
|--|---|
| Give Names and Birth Dates of Eligible Dependents  |   |
| Spouse:<br>Your height: <b>5 ft 2 in</b> Your weight: <b>101 lbs</b>   | Children:<br>Your height: _____ Your weight: _____                  |
| 1. Is anyone getting or thinking about medical treatment or taking any medicine, drugs, pills, shots, etc?   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 2. Does anyone have any physical or mental birth defects, developmental disability, or any physical or mental impairments or things not considered normal? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 3. Has anyone ever had chest pain, heart trouble, heart attack, heart murmur or high blood pressure?   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 4. Has anyone ever had diabetes, urinary problems, arthritis, ulcers, pneumonia or disorder of the lymph system?   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 5. Has anyone ever had cancer or tumors?   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 6. Has anyone ever had surgery or been hospitalized?   | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| 7. Has anyone been to or consulted a doctor, chiropractor or any medical specialist or had blood tests or other diagnostic tests in the last 5 years?      | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 8. Has anyone ever had nervous, respiratory, circulatory, digestive, genital-urinary problems, venereal disease or other infectious disease?               | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 9. Has anyone ever had a mental or nervous disorder or received psychotherapy or counselling?  | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 10. Has anyone ever been treated for the use of alcohol or drugs?  | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 11. Is anyone pregnant?  | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 12. Has anyone ever had AIDS, AIDS related complex or immune disorder?   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |

Give Full Details Regarding Each Person For "Yes" Answers To Questions 1 Through 12

| Question Number | Name of Individual | Nature of Illness or Injury or Medical Attention | Date | Duration | Any Remaining Effects | (Names and Addresses of Physicians or Hospitals)  |
|-----------------|--------------------|--|------|----------|-----------------------|---|
| 6               | Mary L.            | Hysterectomy                                     | 1967 | 1 wk     | none                  | Logan Spann, M.D., Tulsa Doctor's Hospital, Tulsa |
| 6               | Mary L.            | Partial Thyroidectomy                            | 1978 | 1 wk     | none                  | Same as above                                     |
|                 |                    |  |      |          |                       |   |
|                 |                    |  |      |          |                       |   |

If Additional Space Is Needed, Please Attach A Separate Sheet of Paper

I represent that to the best of my knowledge and belief all statements and answers made on this form are true, complete and correct. They shall be a part of this request for insurance under the above Planned Employee Program. I understand that omissions or mistatements regarding medical history could cause an otherwise valid claim to be denied and/or void the insurance if issued. I agree the insurance for anyone for whom such statements and answers are made, will not be in force until approved by Principal Mutual Life Insurance Company at it's Home Office in Des Moines, Iowa. I agree Principal Mutual Life Insurance Company shall not be liable for anyone's claim for disability which happens or begins before such approval date.

I authorize any doctor, health care provider, hospital, clinic or medically-related facility, insurance company, consumer reporting agency or employer, that has any personal information, including physical, mental, drug or alcohol use history, regarding me or any named dependent, to give to Principal Mutual Life Insurance Company, it's agents and employees performing business transactions regarding my coverage, or my employer, if applicable, any such data.

I authorize the MIB, Inc. to furnish the above data to Principal Mutual Life Insurance Company.

I understand that the data obtained by use of this Authorization will be used by Principal Mutual Life Insurance Company to determine eligibility for coverage and claims administration.

I authorize Principal Mutual Life Insurance Company to release any such data to MIB, Inc., or as required by law.

I agree that a photocopy of this form shall be as valid as the original. I understand that I may revoke this authorization for information not then obtained. The revocation must be in writing. It will not be effective until received at Principal Mutual Life Insurance Company's Home Office. Unless revoked, I agree that, when signed in connection with an application for, reinstatement of, or request for change in benefits, this form shall be valid for two years after the date shown below.

Date **3-30-88** Signature of Member **Mary Lea Washburn**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF EDMOND, OKLAHOMA  
and EDMOND PUBLIC WORKS  
AUTHORITY

Defendants.

89-C-114-E

8-25-89

**ORDER**


The Court has for consideration the Report and Recommendation of the United States Magistrate filed July 27, 1989 in which the Magistrate recommended that the Defendant's Motion to Dismiss or in the Alternative to Transfer Venue, be granted, in that the instant action be transferred to the Western District of Oklahoma.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the Defendant's Motion to Dismiss or in the Alternative to Transfer Venue, is granted, in that the instant action is transferred to the Western District of Oklahoma.

Dated this 24<sup>th</sup> day of August, 1989.

  
JAMES O. ELLISON,  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEORGE P. CORNWELL, JR.,

Plaintiff,

vs.

WANG LABORATORIES, INC.,  
et al.,

Defendants.

No. 89-C-237-E ✓

AUG 25 1989 *dt*

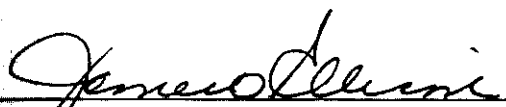
U.S. DISTRICT COURT

**ADMINISTRATIVE CLOSING ORDER**

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 24<sup>th</sup> day of August, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LYNN M. SEELYE, et al,

Plaintiffs,

vs.

L & M NATURAL RESOURCES, INC.,  
et al.

Defendants.

CASE NO. 86-C-394-E

JOURNAL ENTRY OF JUDGMENT

NOW on this 20th day of June, 1989, this matter came on for hearing on the Receiver's Application for Hearing on Second Decree of Sale filed herein on the 24th day of March, 1989; the Receiver's Addendum to said Application filed herein on the 16th day of June, 1989; and, the objections thereto as well as to fees requested by the Receiver, John D. Schuler ("Receiver") and his attorneys, Thornton and Thornton, a Professional Corporation ("T&T"), filed by Plaintiffs Lynn M. Seelye ("Seelye"), Morty Boyd ("Boyd") and James A. Anderson ("J. Anderson").

The Receiver, John D. Schuler, was present in person and was represented by his attorney David M. Thornton, of T&T. Plaintiffs J. Irvine Beattie, Ross Beattie and Reginald A. Baxter were not present but also were represented by T&T. Seelye was present in person and was represented by Robert J. Emmons. Boyd and J. Anderson, neither of whom were present in person, also were represented by Mr. Emmons.

The Court, after reviewing the previous filings and actions of the Court and after hearing the testimony of witnesses and reviewing the documentary evidence submitted, finds that:

1. The Supplemental and Restated Accounting of the Receiver for the period of October 12, 1988 through June 15, 1989 is proper and is approved except that the amount of Receiver's fees of \$8,294.15 should be reduced to \$6,000.00, and the amount of attorney fees due T&T of \$6,158.52 should be reduced to \$5,000.00.

2. T&T submitted a claim for legal services rendered as of June 15, 1989, to Plaintiffs in the amount of \$7,914.59, which it asserted was owed by the following Plaintiffs in the amounts set opposite their names, to-wit:

|                   |                    |
|-------------------|--------------------|
| Lynn M. Seelye    | \$ 2,658.02        |
| Morty J. Boyd     | \$ 2,658.02        |
| Wayne Anderson    | \$ 1,318.90        |
| James A. Anderson | \$ 666.37          |
| Charles Deal      | \$ 586.59          |
| Reginald Baxter   | \$ 26.69           |
|                   | <u>\$ 7,914.59</u> |

The Court makes no finding regarding any of the above fees owed by Plaintiffs to T&T. Attorney fees incurred by T&T for services rendered to Plaintiffs, outside of the receivership, are beyond the scope of these findings. To the extent that any previous order purported to approve these fees that order was in error and was specifically rejected by the Court at the June 20 hearing. The Court is aware that the Settlement Agreement executed by Plaintiffs states that the Court will set any amount of attorney fees not agreed to by and between Plaintiffs. This provision does not mean, however, that the Court will set the fees between Plaintiffs and their counsel for fees incurred outside the receivership. Those fees are not properly the subject of the Court's attention and must be resolved by T&T and Plaintiffs.

Seelye and Boyd have each deposited the amount of \$2,196.00 to the Court Clerk in satisfaction of the fees owed T&T for services outside of the receivership. These funds shall be paid to T&T.

3. The Receiver's Addendum to Application for Hearing on Second Amended Decree of Sale includes an apportionment of each Plaintiffs' share of Receiver's fees and expenses. This apportionment is as follows:

| <u>Party</u>    | <u>Interest</u> | <u>Receiver's Fee<br/>&amp; Expenses</u> |
|-----------------|-----------------|--|
| James Anderson  | 2.5%            | \$ 762.60                                |
| Wayne Anderson  | 2.5%            | \$ 762.60                                |
| Reginald Baxter | 7.5%            | \$ 2,287.82                              |
| Irvine Beattie  | 5.0%            | \$ 1,525.21                              |
| Ross Beattie    | 7.5%            | \$ 2,287.82                              |
| Morty Boyd      | 6.25%           | \$ 1,906.51                              |
| Charles Deal    | 2.5%            | \$ 762.61                                |
| Pete Harlow     | 5.0%            | \$ 1,525.21                              |
| Lynn Seelye     | 6.25%           | \$ 1,906.51                              |
| Total:          | 45%             | \$13,726.89                              |

To reflect the Court's reduction of Receiver's and attorney fees under Paragraph 1 above, the apportionment is as follows:

| <u>Party</u>    | <u>Interest</u> | <u>Receiver's Fee<br/>&amp; Expenses</u> |
|-----------------|-----------------|--|
| James Anderson  | 2.5%            | \$ 570.79                                |
| Wayne Anderson  | 2.5%            | \$ 570.79                                |
| Reginald Baxter | 7.5%            | \$ 1,712.37                              |
| Irvine Beattie  | 5.0%            | \$ 1,141.58                              |
| Ross Beattie    | 7.5%            | \$ 1,712.37                              |
| Morty Boyd      | 6.25%           | \$ 1,426.98                              |
| Charles Deal    | 2.5%            | \$ 570.79                                |
| Pete Harlow     | 5.0%            | \$ 1,141.58                              |
| Lynn Seelye     | 6.25%           | \$ 1,426.97                              |
| Total:          | 45%             | \$10,274.22                              |

4. The amounts shown in the Receiver's Fee & Expenses Column immediately above are to be paid into the Clerk of this Court on or before the 25 day of Sept, 1989.

5. When the Clerk of this Court has received the aforesaid amounts he shall advise the Receiver who, subject to an order of the Court, shall make the appropriate disbursement to himself and T&T, plus a payment of \$1,817.39 to Seelye for funds previously advanced by Seelye. As agreed to by the parties to this litigation, as each Plaintiff pays the aforesaid amounts on or before the 25 day of Sept, 1989, then the above percentage interest set opposite their names shall be distributed and awarded to the paying Plaintiff.

6. In the event any one of Plaintiffs fail to pay said amounts then the interest or interests attributable to such Plaintiffs shall be sold in accordance with

the Application filed herewith and the sale proceeds shall be deposited with the Court and disbursed by order of the Court.

7. Seelye, Boyd, Pete Harlow, Wayne Anderson and J. Anderson each have deposited with the Clerk of this Court a cash bond of \$500.00. As each one of these Plaintiffs pays the amount required to be paid by him under Paragraphs 5 and 6 below, the \$500.00 shall be paid to him at the time his interest is distributed to him.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Supplemental and Restated Accounting for the period of October 12, 1988 through June 15, 1989 is approved with the exception of the Receiver's fee of \$8,294.15 and the attorney fees of \$6,158.52, which respectively are reduced to the amounts of \$6,000.00 and \$5,000.00.

2. The Receivership should be terminated and wound up in accordance with the Settlement Agreement entered into and executed by all the parties to this litigation.

3. T&T, as attorneys for Plaintiffs, shall be paid the following amounts for legal services rendered by them to Plaintiffs, Seelye and Boyd which they deposited with the Court Clerk:

|                |             |
|----------------|-------------|
| Lynn M. Seelye | \$ 2,196.00 |
| Morty J. Boyd  | \$ 2,196.00 |

4. The fees and expenses of the Receiver in the amount of \$10,274.22 are chargeable to and shall be paid by the following Plaintiffs in the amount set out opposite their names:

|                   |                    |
|-------------------|--------------------|
| James A. Anderson | \$ 570.79          |
| Wayne Anderson    | \$ 570.79          |
| Reginald Baxter   | \$ 1,712.37        |
| Irvine Beattie    | \$ 1,141.58        |
| Ross Beattie      | \$ 1,712.37        |
| Morty Boyd        | \$ 1,426.98        |
| Charles Deal      | \$ 570.79          |
| Pete Harlow       | \$ 1,141.58        |
| Lynn M. Seelye    | \$ 1,426.97        |
|                   | <u>\$10,274.22</u> |

5. Plaintiffs, by an appropriate Order of the Court, shall receive the respective interest set out opposite their names upon paying the amount set out opposite their names in the Receiver's Fee & Expenses Column below on or before the 25 day of Sept, 1989:

| <u>Party</u>    | <u>Interest</u> | <u>Receiver's Fee<br/>&amp; Expenses</u> |
|-----------------|-----------------|--|
| James Anderson  | 2.5%            | \$ 570.79                                |
| Wayne Anderson  | 2.5%            | \$ 570.79                                |
| Reginald Baxter | 7.5%            | \$ 1,712.37                              |
| Irvine Beattie  | 5.0%            | \$ 1,141.58                              |
| Ross Beattie    | 7.5%            | \$ 1,712.37                              |
| Morty Boyd      | 6.25%           | \$ 1,426.98                              |
| Charles Deal    | 2.5%            | \$ 570.79                                |
| Pete Harlow     | 5.0%            | \$ 1,141.58                              |
| Lynn Seelye     | 6.25%           | \$ 1,426.97                              |
| Total:          | 45%             | \$10,274.22                              |

6. If any of Plaintiffs fail to pay the amounts assessed against them by the 25 day of Sept, 1989, the Court shall order the sale of the interest or interests of such Plaintiff or Plaintiffs in accordance with the Application filed herewith and the proceeds of such sale shall be paid into the Clerk of this Court and shall be held until further Order of this Court.

7. Upon Seelye, Boyd, Pete Harlow, Wayne Anderson and J. Anderson paying the amounts required to be paid by each of them under Paragraphs 5 above and upon entry of final judgment herein discharging the Receiver, the Clerk of this Court shall pay to each of these Plaintiffs the \$500.00 cash bond which they deposited with the Clerk at the time of the appointment of the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a hearing be held on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, at 9:30 a.m. to finalize this Judgment or to take further action as the Court deems necessary.

Dated this \_\_\_\_\_ day of August, 1989.

BY JAMES O. ELLISON  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

**APPROVED AS TO FORM:**

---

David M. Thornton  
O.B.A. No. 8999  
THORNTON and THORNTON,  
a Professional Corporation  
525 South Main, Suite 660  
Tulsa, Oklahoma 74103  
Telephone: (918) 587-2544

---

Robert J. Emmons  
EMMONS AND CODER  
608 Strain Building  
Great Falls, MT 59401

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,       )  
                                      )  
                  Plaintiff,       )  
                                      )  
vs.                                   )  
                                      )  
DANNY R. LUTZ,                    )  
                                      )  
                  Defendant.       ) CIVIL ACTION NO. 88-C-916-E

DEFAULT JUDGMENT

This matter comes on for consideration this 24 day  
of Aug, 1989, the Plaintiff appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Catherine J. Depew, Assistant United States  
Attorney, and the Defendant, Danny R. Lutz, appearing not.

The Court being fully advised and having examined the  
court file finds that Defendant, Danny R. Lutz, was served with  
Summons and Complaint on October 18, 1988. The time within  
which the Defendant could have answered or otherwise moved as to  
the Complaint has expired and has not been extended. The  
Defendant has not answered or otherwise moved, and default has  
been entered by the Clerk of this Court. Plaintiff is entitled  
to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the  
Plaintiff have and recover judgment against the Defendant,

Danny R. Lutz, for the principal amount of \$630.78, plus accrued interest of \$706.37 as of July 25, 1988, plus interest thereafter at the rate of 7 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.75 percent per annum until paid, plus costs of this action.

*JAMES C. BURTON*

---

UNITED STATES DISTRICT JUDGE

cen

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 25 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JAMES W. BUTLER, and his minor  
children,

Plaintiffs,

vs.

No. 89-C-385-B

JUANITA WALLACE d/b/a PEE WEE DAY  
CARE CENTER, and O.B. GRAHAM,

Defendants.

ORDER

This matter comes before the Court upon Plaintiff's Motion to vacate the Order this Court entered on June 26, 1989, dismissing Plaintiff's Complaint for lack of diversity jurisdiction. Plaintiff now alleges a federal cause of action based upon 38 U.S.C. §§ 3202 and 3501.

Plaintiff alleges the Defendants fraudulently converted and misappropriated his Veteran's Administration pension funds paid to Defendant Juanita Wallace for Plaintiff's benefit. Defendant Wallace was Plaintiff's wife and guardian. Title 38, Section 3202 (b) provides in part:

"Whenever it appears that any guardian, curator, conservator, or other person, in the opinion of the Administrator, is not properly executing or has not properly executed the duties of the trust of such guardian, curator, conservator, or other person ... or has failed to make such payments as may be necessary for the benefit of the ward ... then the Administrator may appear, by his duly authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper

presentation of such matters."

This section gives the Administrator the right to police fiduciaries in their management of a ward's benefits. It does not, however, provide the ward with a private cause of action. Title 38, Section 3501 merely enumerates the penalties to be imposed if a fiduciary breaches its duty to the ward. 38 C.F.R. § 13.100 Supervision of Fiduciaries implements the penalties enumerated in § 3501.

"(d) *Misappropriation, embezzlement or violation of Federal statutes.* When the evidence indicates a prima facie case of misappropriation, embezzlement or violation of the Federal statutes, the matter will be submitted to the District Counsel for review and, if appropriate, the District Counsel's referral to the U.S. Attorney."

Therefore, both 38 U.S.C. § 3202 and 38 C.F.R. § 13.100 contemplate actions being brought by the Administrator or on the Administrator's behalf. The fact that a federal statute may have been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person. Touche Ross & Co. v. Redington, 442 U.S. 560, 568 (1979); Cannon v. University of Chicago, 441 U.S. 667, 688 (1970). Several factors are relevant when determining whether a private remedy is implicit in a statute which does not expressly provide for a private remedy.

"First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,'-- that is does the statute create a federal right in favor of the plaintiff. Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of

action one traditionally relegated to state law...?" (citations omitted).

Cort v. Ash, 422 U.S. 66, 78 (1975).<sup>1</sup> In this instance, there is nothing more than a criminal statute in which to infer that civil enforcement of any kind was available to anyone other than the Administrator. Furthermore, the legislative history does not indicate Congress intended to create a private cause of action. 1957 U.S. Code Cong. & Ad. News 1214.

Plaintiff has offered no basis for invoking this Court's subject matter jurisdiction. It is therefore ORDERED that Plaintiff's Motion to Vacate be OVERRULED and the case dismissed.

IT IS SO ORDERED, this 25 day of August, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup>The central inquiry is whether Congress intended, either expressly or by implication to create a private cause of action and therefore the factors are not necessarily entitled to equal weight. Touche Ross & Co. v. Redington, 422 U.S. 560, 575-576 (1979).

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 25 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

LEONARD ARABIA, MARVIN BASIL )  
CAROL CHISHOLM WEINER, and )  
ARTHUR ARAKELIAN, individuals, )

Plaintiffs, )

and )

PRENTICE THOMAS, an )  
individual, NEW WORLD )  
RESEARCH, INC., a Florida )  
corporation, SANDRA F. )  
NICHOLS, an individual, SAGE )  
M. JOHNSTON and ZODIE )  
JOHNSTON, individuals, DALE )  
E. PETERSON, an individual, )  
RAYMOND D. FOWLER, an )  
individual, HUEY C. WARD, an )  
individual, ARMAND J. GAGNE, )  
an individual, JAMES E. )  
COCHRAN, an individual, and )  
WILLIAM B. HARRIS and BERYL )  
M. HARRIS, individuals, )

Intervenors, )

vs. )

Case No. 89-C-091B

GIANT PETROLEUM, INC., an )  
Oklahoma Corporation, GEORGE )  
ELIAS, JR., and CATHY ELIAS, )  
individuals; CIMARRON CRUDE )  
CO., an Oklahoma Corporation, )  
and AMERICAN PETROLEUM )  
TRADING, INC., an Oklahoma )  
corporation, KERR-McGEE )  
CORPORATION, a Delaware )  
Corporation, and AP&W, INC., )  
an Oklahoma corporation, )

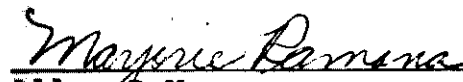
Defendants. )

STIPULATION OF DISMISSAL  
OF DEFENDANTS KERR-McGEE CORPORATION,  
AP&W, INC., AND CIMARRON CRUDE CO.

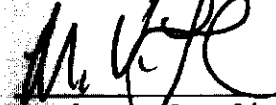
COME NOW the plaintiffs, Leonard Arabia, Marvin Basil, Carol

Chisholm Weiner and Arthur Arakelian and the defendants Kerr McGee Corporation, AP&W, Inc., and Cimarron Crude Co., and pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure stipulate to the dismissal of defendants Kerr-McGee Corporation, AP&W, Inc., and Cimarron Crude Co., from this action, each party to bear its own costs.

Respectfully submitted,



Allan DeVore  
Marjorie Ramana  
The DeVore Law Firm,  
A Professional Corporation  
1318 North Robinson  
Oklahoma City, Oklahoma 73103  
(405) 232-4997  
Attorney for Plaintiffs



Mark Vanlandingham  
Kerr-McGee Center  
P.O. Box 205861  
Oklahoma City, OK 73125  
Attorneys for Defendant Kerr-McGee Corporation

Clifford Archer  
P.O. Box 35769  
Tulsa, OK 74153  
Appearing Pro Se on behalf  
of Cimarron Crude, Inc.

John D. Boydston  
Mark F. Peyton, III  
Boydston & Peyton, Attorneys At Law  
1717 S. Boulder, Suite 800  
Tulsa, OK 74119

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEONARD ARABIA, MARVIN BASIL )  
CAROL CHISHOLM WEINER, and )  
ARTHUR ARAKELIAN, individuals, )

Plaintiffs, )

and )

PRENTICE THOMAS, an )  
individual, NEW WORLD )  
RESEARCH, INC., a Florida )  
corporation, SANDRA F. )  
NICHOLS, an individual, SAGE )  
M. JOHNSTON and ZODIE )  
JOHNSTON, individuals, DALE )  
E. PETERSON, an individual, )  
RAYMOND D. FOWLER, an )  
individual, HUEY C. WARD, an )  
individual, ARMAND J. GAGNE, )  
an individual, JAMES E. )  
COCHRAN, an individual, and )  
WILLIAM B. HARRIS and BERYL )  
M. HARRIS, individuals, )

Intervenors, )

vs. )

Case No. 89-C-091B

GIANT PETROLEUM, INC., an )  
Oklahoma Corporation, GEORGE )  
ELIAS, JR., and CATHY ELIAS, )  
individuals; CIMARRON CRUDE )  
CO., an Oklahoma Corporation, )  
and AMERICAN PETROLEUM )  
TRADING, INC., an Oklahoma )  
corporation, KERR-McGEE )  
CORPORATION, a Delaware )  
Corporation, and AP&W, INC., )  
an Oklahoma corporation, )

Defendants. )

STIPULATION OF DISMISSAL  
OF DEFENDANTS KERR-McGEE CORPORATION,  
AP&W, INC., AND CIMARRON CRUDE CO.

COME NOW the plaintiffs, Leonard Arabia, Marvin Basil, Carol

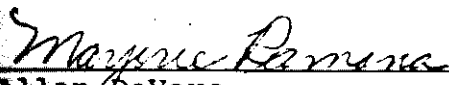
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AUG 21 1989

THE DEVORE LAW FIRM

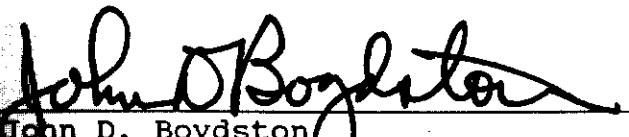
Chisholm Weiner and Arthur Arakelian and the defendants Kerr McGee Corporation, AP&W, Inc., and Cimarron Crude Co., and pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure stipulate to the dismissal of defendants Kerr-McGee Corporation, AP&W, Inc., and Cimarron Crude Co., from this action, each party to bear its own costs.

Respectfully submitted,

  
Allan DeVore  
Marjorie Ramana  
The DeVore Law Firm,  
A Professional Corporation  
1318 North Robinson  
Oklahoma City, Oklahoma 73103  
(405) 232-4997  
Attorney for Plaintiffs

Mark Vanlandingham  
Kerr-McGee Center  
P.O. Box 205861  
Oklahoma City, OK 73125  
Attorneys for Defendant Kerr-McGee Corporation

Clifford Archer  
P.O. Box 35769  
Tulsa, OK 74153  
Appearing Pro Se on behalf  
of Cimarron Crude, Inc.

  
John D. Boydston  
Mark F. Peyton, III  
Boydston & Peyton, Attorneys At Law  
1717 S. Boulder, Suite 800  
Tulsa, OK 74119

CERTIFICATE OF MAILING

This is to certify that on the 23rd day of August, 1989, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following:

James A. Williamson  
1736 South Carson  
Tulsa, OK 74119  
Attorney for Defendants George Elias, Jr., and Giant Petroleum, Inc.

Mark Vanlandingham  
Kerr-McGee Center  
P.O. Box 205861  
Oklahoma City, OK 73125  
Attorneys for Defendant Kerr-McGee Corporation

Wesley R. Thompson  
15 South Park Street  
Sapulpa, OK 74066  
Attorney for Defendant American Petroleum Trading, Inc.

Clifford Archer  
P.O. Box 35769  
Tulsa, OK 74153  
Appearing Pro Se on behalf  
of Cimarron Crude, Inc.

Mark F. Peyton, III  
Boyston & Peyton, Attorneys At Law  
1717 S. Boulder, Suite 800  
Tulsa, OK 74119

Stephen Q. Peters  
Short, Harris, Turner, Daniel and McMahan  
1924 S. Utica, Suite 700  
Tulsa, OK 74104

  
\_\_\_\_\_  
Marjorie Ramana

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN DAVID BENTLEY and  
SHEILA G. BENTLEY,  
individuals,

Plaintiffs,

v.

No. 88-C-695-E

CHARLES J. FINK and  
CHARLES O. FINK,  
individuals,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to Stipulation between the parties, this Court  
hereby dismisses the above-captioned matter with prejudice.

IT IS SO ORDERED this 23<sup>rd</sup> day of August, 1989.

151 James O. Ellison  
JAMES O. ELLISON, UNITED STATES  
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity,

Plaintiff,

vs.

CARLOS B. LANGSTON and  
CARLOS V. LANGSTON, a/k/a  
CARLOS B. LANGSTON, SR., CARLOS  
LANGSTON, SR., or CARLOS V.  
LANGSTON, SR.

Defendants.

**FILED**

**AUG 24 1989**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 89-C-122-B

**ORDER VACATING ORDER OF VOLUNTARY DISMISSAL, JUDGMENT  
AND JUDGMENT FOR ATTORNEY FEES AND COSTS**

There comes on for consideration the Motion of the Plaintiff, Federal Deposit Insurance Corporation ("FDIC"), for the vacating of the Order of Voluntary Dismissal Without Prejudice of Second Claim for Relief of FDIC's Amended Complaint, the Judgment entered by this Court on August 8, 1989, and the Judgment for Attorney Fees and Costs entered on August 10, 1989, and the Court being fully informed and for good cause shown, does hereby grant Plaintiff's Motion and hereby vacates the Order and Judgments.

Dated this 24<sup>th</sup> day of August, 1989.

**S/ THOMAS R. BRETT**

United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 24 1989

John C. Silver, Clerk  
U.S. DISTRICT COURT

COMBINED MEDIA SERVICE, INC.,  
an Oklahoma corporation,

Plaintiff,

vs.

No. 89-C-406-B

GENE SCOTT EVANGELISTIC  
ASSOCIATION, INC.,

Defendant.

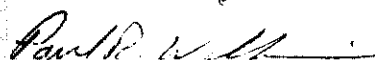
NOTICE OF DISMISSAL

TO: Gene Scott Evangelistic Association, Inc.  
c/o Marvin W. Manross  
Manross & Associates  
1001 North Central Avenue  
Suite 595  
Phoenix, Arizona 85004

Please take notice that the above entitled action is hereby dismissed without prejudice by the Plaintiff, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, and that the Plaintiff hereby files this Notice of Dismissal with the Clerk of the Court before service by the Defendant of either an answer or motion for summary judgment.

DATED this 24<sup>th</sup> day of August, 1989.

Respectfully submitted,

  
Paul R. Williams III, OBA #10692  
NORMAN & WOHLGEMUTH  
2900 Mid-Continent Tower  
Tulsa, OK 74103  
Attorneys for the Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity,

Plaintiff,

vs.

CARLOS B. LANGSTON and  
CARLOS V. LANGSTON, a/k/a  
CARLOS B. LANGSTON, SR.,  
CARLOS LANGSTON, SR., or  
CARLOS V. LANGSTON, SR.,

Defendants.

FILED

AUG 21 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 89-C-122-B

JUDGMENT FOR ATTORNEYS' FEES AND COSTS

ON this 24<sup>th</sup> day of August, 1989, the Application to Tax Attorneys' Fees as Costs and the Motion to Tax Costs of Plaintiff, Federal Deposit Insurance Corporation ("FDIC") against Defendant Carlos B. Langston ("Langston") comes on before the Court for consideration. Plaintiff FDIC submitted its Application and Motion on June 14, 1989. The Application and Motion were unopposed by Langston. According to Local Rule 15(a), a failure to respond will constitute a confession of the matters raised by the Application and Motion. On June 28, 1989, the Court Clerk for the Northern District of Oklahoma taxed the expenses as costs, as documented and verified in the Bill of Costs submitted with the Motion to Tax Costs, against Defendant Langston. The Court, having examined the pleadings and evidence, and being fully advised as to the premises, finds that the FDIC's Application to Tax Attorneys' Fees and Motion to Tax Costs should be sustained. The Court specifically finds as follows:

1. This Court has jurisdiction over the subject matter herein and has personal jurisdiction over Defendant Langston.
2. On May 30, 1989, an Order and Partial Summary Judgment was entered by this Court in favor of the FDIC and against Defendant Langston on a promissory note for \$50,000.00, plus accrued and unpaid interest

through April 19, 1989, in the amount of \$29,697.70, plus interest from April 19, 1989, to date of Judgment at a per diem rate of \$30.48, plus post-judgment interest at a rate of 9.15% on the entire judgment amount from the date of judgment until paid.

3. The promissory note executed by Defendant Langston contains a provision which provides that Langston will pay "reasonable costs of collection, including an attorneys' fee at 15% of all sums due upon default".

4. The FDIC incurred the sum of \$162.82 for court costs in prosecuting this action against Defendant Langston to collect the Note, and on June 28, 1989, the Clerk of this Court taxed the court costs against Defendant Langston.

5. Pursuant to Okla. Stat. tit. 12 §936, the prevailing party in an action to collect upon a note is entitled to collect a reasonable attorney's fee.

6. The FDIC has incurred the sum of \$2,123.75 for attorneys' fees in prosecuting this action against Defendant Langston to collect the Note. The Court finds this sum is reasonable in light of the circumstances of this action.

7. Defendant Langston has failed to establish a valid objection to the Application of the FDIC and the FDIC is entitled to judgment in accordance with the FDIC's Application and Motion filed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Federal Deposit Insurance Corporation shall have and recover of and from Carlos B. Langston a judgment in the amount of \$2,123.75 for attorneys' fees incurred in prosecuting this action to collect upon the promissory note, and shall have and recover of and from Carlos B. Langston a judgment in the amount of \$162.82 for court costs incurred in prosecuting this action to collect upon the promissory note.

S/JEFFREY S. WOLFE  
U.S. MAGISTRATE  
United States Magistrate

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 24 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JIMMIE C. PHOENIX,

Plaintiff,

vs.

WILLIAMS PIPELINE COMPANY,

Defendant.

No. 88-C-792-B

J U D G M E N T

In accordance with the Order entered this date sustaining the Defendant Williams Pipeline Company's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant Williams Pipeline Company and against the Plaintiff Jimmie C. Phoenix. The Plaintiff shall take nothing from his claims. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

ENTERED, this 24 day of August, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
AUG 24 1989 dt

LUC J. VAN RAMPENBERG,  
Plaintiff,  
v.  
U.S.A., et al.,  
Defendant.

Complaint no: 89-C-671-E ✓

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

NOTICE OF DISMISSAL  
MOTION TO WITHDRAW COMPLAINT.

Plaintiff, Luc J. VanRampelberg, pro-se hereby moves the court  
to withdraw his claim set forth within this case, having obtained  
for the largest part satisfaction. *pursuant rule 41*

Respectfully submitted;



Luc J. VanRampelberg  
6356 South 103rd East Ave  
Tulsa Ok 74133-1567

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 24 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JERRY KEHLER and SHARON MEANS,  
as surviving natural father and  
mother of TIMOTHY SCOTT KEHLER,  
a deceased unemancipated minor,  
Plaintiffs,

vs.

No. 88-C-232-B

GALION IRON WORKS AND MANU-  
FACTURING COMPANY, a division  
of, or a successor corporation  
of, or a merged corporation with  
DRESSER INDUSTRIES, a foreign  
corporation,

Defendant.

J U D G M E N T

Pursuant to the Jury's verdict rendered herein on August 23, 1989, Judgment is hereby entered in favor of the Defendant, Galion Iron Works and Manufacturing Company, and against the Plaintiffs, Jerry Kehler and Sharon Means, the Plaintiffs to take nothing from their claim. The claim of the Plaintiffs is hereby dismissed and costs of the action are assessed against the Plaintiffs, if timely applied for pursuant to local rules.

ENTERED, this 24<sup>th</sup> day of August, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity,

Plaintiff,

vs.

CARLOS B. LANGSTON and  
CARLOS V. LANGSTON, a/k/a  
CARLOS B. LANGSTON, SR., CARLOS  
LANGSTON, SR., or CARLOS V.  
LANGSTON, SR.

Defendants.

**FILED**

AUG 24 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 89-C-122-B

**ORDER OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE  
OF SECOND CLAIM FOR RELIEF OF FDIC'S AMENDED COMPLAINT**

Pursuant to the Stipulation for Voluntary Dismissal and for good cause shown, it is hereby ordered that Plaintiff Federal Deposit Insurance Corporation's Complaint, Amended Complaint and each claim for relief asserted therein as against Defendant Carlos V. Langston is hereby dismissed without prejudice and Plaintiff Federal Deposit Insurance Corporation's Second Claim for Relief as set forth in its Amended Complaint is hereby dismissed without prejudice, each party to bear their own attorney's fees, costs and expenses and incurred herein.

Dated this 24<sup>th</sup> day of August, 1989.

S/JEFFREY S. WOLFE  
U.S. MAGISTRATE

Jeffrey S. Wolfe  
United States Magistrate

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

HAROLD WAYNE BURLINGAME and  
BARBARA JEAN BURLINGAME,  
  
Debtors.

No. 88-2062-C  
Chapter 11

BANCFIRST,

Appellant,

vs.

HAROLD WAYNE BURLINGAME and  
BARBARA JEAN BURLINGAME,  
  
Appellees.

No. 89-C-546-C

**F I L E D**

AUG 24 1989

Jack C. Sherry, Clerk  
U.S. DISTRICT COURT

**ORDER**

This matter came before the Court for hearing on August 1, 1989 for consideration of the motion of Bancfirst for stay of confirmation of the Third Plan of Reorganization entered by the Bankruptcy Court for the Northern District of Oklahoma pending appeal to this Court.

Bancfirst, successor in interest to Federal National Bank of Shawnee, is a creditor of the debtors, Harold and Barbara Burlingame. The debtors' Third Plan of Reorganization was confirmed over Bancfirst's objection by Judge Steven J. Covey by order dated July 3, 1989 after a hearing on confirmation held on June 28, 1989. Bancfirst filed its motion to stay confirmation with the Bankruptcy Court which was overruled on July 6, 1989.

Judge Covey denied Bancfirst's motion for stay pending appeal as follows:

1. Bancfirst has little likelihood of success on the merits. Bancfirst's appeal is not of substantial merit because it retains all property rights and because it will receive, on account of its unsecured claim, the same treatment as all other unsecured creditors.

2. There would be substantial injury to the other creditors. The risk of harm to other creditors is great because in excess of 90% of all claims voted to accept the plan and thus Bancfirst's vote could not sway any class; thus, the equities militate against stay.

3. There would be no irreparable injury to Bancfirst if the stay pending appeal is denied.

4. The public interest would not be furthered by granting a stay.

The Court having reviewed the parties' briefs, exhibits, the record, applicable law and having received oral arguments, enters the following findings and conclusions. When reviewing an order of the Bankruptcy Court, the Bankruptcy Court's findings of fact must be upheld unless clearly erroneous; its conclusions of law are subject to de novo review. Bartmann v. Maverick Tube Corp., 853 F.2d 1540, 1543 (10th Cir. 1988). Appellant's request for stay pending appeal is in the nature of a preliminary injunction. It is stipulated that the Court must consider four factors in

determining whether to grant a stay. See also, In re Porter, 54 Bankr. 81 (Bkrtcy. N.D.Okla. 1985).

**1. Likelihood of Success on the Merits**

Bancfirst appeals the order of the Bankruptcy Court which confirmed the Third Plan of Reorganization of the debtors on the basis that it was denied a property right without due process of law.

Initially, Bancfirst argues that it was denied procedural due process in that it did not receive adequate notice or a meaningful hearing as to the amendments contained in the Third Plan of Reorganization prior to confirmation. Disclosure of information to creditors is governed by 11 U.S.C. §1125(b), which states that creditors votes on a plan:

may not be solicited ... unless, at the time of or before such solicitation, there is transmitted to such holder [creditor] the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, as containing adequate information.

It is undisputed that on April 20, 1989 debtors filed their Second Plan of Reorganization, as Modified. Under that plan, a partnership was to be formed which would purchase the assets of the estate and the debtors would retain no interest in the non-exempt assets of the estate. Bancfirst was listed as a secured creditor. On the same day the Second Plan was filed, the debtors filed their Modified Disclosure Statement for Debtor's Second Plan of Reorganization. Bancfirst submitted its secured creditor's ballot accepting the Second Plan. Following an extensive hearing, the disclosures were approved by the Bankruptcy Court.

On May 30, 1989, after settling a dispute with one of their major creditors, Local American Bank, the debtors filed another plan, the Third Plan of Reorganization. A Supplemental Disclosure statement for Debtor's Third Plan of Reorganization was filed on that same date. Bancfirst again voted its secured claim to accept the plan.

On June 23, 1989 the day ballots were to be submitted on accepting the Third Plan, the debtors filed four separate amendments to the plan, one of which affected Bancfirst.

Under the amendments, the partnership purchase of estate assets was eliminated and the debtor retained all assets of the estate, also Bancfirst's status as secured creditor was in question. Other modifications to the Third Plan included:

- a "contribution" by the debtors of \$250,000, which was to be borrowed by the estate, secured by estate assets, and repaid from estate funds,

- abandonment of significant additional properties of the estate to secured creditors, and;

- dismissal of certain claims the debtor possessed against a major secured creditor.

The hearing on confirmation was set for Wednesday June 28, 1989. It is disputed as to when Bancfirst first received notice of the amendments. Debtors' attorney asserts that he had discussions a week prior to the hearing with Bancfirst as to the matters raised in the amendments; however, it is undisputed that Bancfirst received a telecopy of the amendments no later than June 26. The next day, Bancfirst resubmitted its ballot, this time rejecting the Third Plan. On June 27, Bancfirst filed its objection to the plan.

The matter was before the Bankruptcy Court for hearing on confirmation of the Third Plan of Reorganization, as Amended on June 28. The Court heard arguments of counsel and, despite objection by Bancfirst, confirmed the plan by finding that the "cram-down" requirements of 11 U.S.C. §1129(b) had been met. The court found that despite the lack of hearing on the supplemental disclosure statement, the disclosures required for approval of a plan were adequate.

At the hearing held on August 1, 1989, before this Court, Bancfirst made reference to the Bankruptcy Court Rule 3017, and argued that it was entitled to not less than 25 days notice of a hearing on matters contained in a disclosure statement. Rule 3017 provides:

Following the filing of a disclosure statement as provided in Rule 3016(c), the court shall hold a hearing on not less than 25 days notice to the debtor, creditors, equity security holders and other parties in interest, as provided in Rule 2002 to consider such statement and any objections or modifications thereto.

Rule 2002(b) provides:

... the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of (1) the time for filing objections to and the hearing to consider approval of a disclosure statement; and (2) the time fixed for filing objections to and the hearing to consider confirmation of a plan.

Debtors respond by asserting that Bancfirst had adequate notice of the amendments to the Third Plan. Further, counsel for Bancfirst was present at the hearing, allowed to participate and the plan was not confirmed until after the Bankruptcy Court considered Bancfirst's objections.

The issue becomes whether the 25 day notice provision contained within Rule 2002(b) must be strictly followed to provide

Bancfirst adequate notice prior to confirmation and due process of law. Bankruptcy Rule 9006(c)<sup>1</sup> appears to limit the strict wording of Rule 2002(b). In the case, In re Holland, 85 B.R. 735 (Bkrtcy W.D.Tex. 1988) the court opined that "all other things being equal, Rule 9006(c) should permit a reduction of the 25 day notice period for hearings on approval of disclosure statements." Id. at 736. The court concluded that:

Bankruptcy Rule 9006(c)(1) authorizes a court to shorten time periods associated with giving notice of hearings, unless a given time period is specifically excluded by Bankruptcy Rule 9006(c)(2). Bankruptcy Rule 9006(c)(2) does not specifically exclude Rule 2002(b) from the authority to reduce time periods granted under Bankruptcy Rule 9006(c)(1). The court therefore has the power to reduce the time periods set out in Bankruptcy Rule 2002(b) for giving notice of hearing on the approval of a disclosure statement and for giving notice of hearing on a confirmation of a plan.

Id. 85 B.R. at 737.

Under 9006(c)(1) in order for a court to reduce the required 25 day notice provision, the court must determine that "good cause exists." The Bankruptcy Court did find that good cause existed for reducing the notice requirements. In finding that creditors had adequate notice of the changes made in the Third Plan, the Bankruptcy Court made the following findings:

... relying upon the statement of Mr. Bratton and his huge unsecured claim and the creditors' committee that he represents for the unsecureds, that there was no confusion as to what was being done in this amended third plan.... the unsecured knew that the property was going to remain with the debtor and wasn't going to be conveyed to NUPAP or any third party entity. And there was no confusion on the vote .... The only possible difference it would make is if the other unsecureds didn't know what they were voting on. I feel that they do. I feel there was plenty of disclosure here, plenty of

---

<sup>1</sup>Rule 9006(c) provides:

- (1) In general. Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specific time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.
- (2) Reduction not permitted: The court may not reduce the time for taking action under Rules 2002(a)(4) and (a)(8), 2003(a), 3002(c), 3014, 3015, 4003(a), 4004(a), 4007(c) and 8002.

financial information, half a dozen or more hearings.... The major changes were explained to the creditors before they voted. I don't think you had to have another disclosure ...

....

And we have a huge, huge amount of indebtedness here that has accepted the plan.

Transcript of hearings on Confirmation, June 28,  
1989 pp.59-60.

This Court has independently reviewed the record and concludes that debtors made a sufficient showing of good cause to reduce the notice provision regarding disclosure statements.

The test for determining whether the three to five day notice given in this case was sufficient is as follows:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearances.

In re Rideout, 86 B.R.523, 526-7 (Bkrtcy. N.D.Ohio  
1988) citing Mullane v. Central Hanover Bank,  
339 U.S. 306 (1950).

From a review of the Bankruptcy Court transcript, this Court concludes that Bancfirst is not likely to succeed on the merits of its claim for lack of procedural due process, sufficient to warrant a stay of confirmation.

Secondly, Bancfirst argues that it was denied a valuable property right without due process of law, that is, its status as a secured creditor under the plan. Bancfirst asserts that, from the date of filing the bankruptcy case in July 1988 until it received notice of the amendments to the Third Plan, it held the status of secured creditor. Under the amendment its status changed to being secured only to the extent of the actual value of the

collateral securing the indebtedness. The valuation of the collateral was undetermined and would not be determined until after confirmation. Bancfirst argues that to allow the debtors to suddenly modify the plan to take away a significant part of Bancfirst's claim without any opportunity to fairly analyze and object violates due process.

Debtors respond by asserting that Bancfirst had not been deprived of any vested property interest. Bancfirst property interest is in its notes and mortgage. What was effectively eliminated in the amended plan was the alleged preferential treatment regarding Bancfirst's interest in the proceeds of the joint venture which was conveyed as additional collateral fifteen days prior to the bankruptcy action.

The Bankruptcy Court determined that Bancfirst's interest would be protected through the post-confirmation valuation hearing. The Bankruptcy Court confirmed the plan on the basis that an evaluation hearing regarding Bancfirst's collateral would be conducted so that the provisions of 1129(b) would be met. Further after the Bankruptcy Court makes the valuation determination, it reserved the right in Bancfirst to make an 1111(b) election.

Thus, this Court concludes that Bancfirst has not made a sufficient showing that it was deprived of a property right without due process sufficient to stay confirmation of the plan.

## **2. Irreparable Harm to Bancfirst**

The Bankruptcy Court found that under the amended plan, Bancfirst's treatment was in compliance with 1129(b), in that

Bancfirst would be paid the present value of its collateral, and be afforded a post-confirmation valuation hearing.

The Bankruptcy Court determined that over 90 percent of the unsecured creditors had accepted the plan. Even if Bancfirst's claim was voted 100 percent unsecured, it would still be voted out. Therefore a change in Bancfirst's status would not affect approval of the plan by creditors. Bancfirst had no independent ability to defeat the amended plan.

### **3. Irreparable Harm to Other Creditors and Debtors**

The Third Plan, as amended, contained approximately 17 to 18 million dollars of secured claims divided into 33 classes. All classes, except Bancfirst, voted to accept the Plan.

The plan contained approximately 3.5 million dollars of unsecured claims and over 90% of the unsecured creditors approved the plan.

The plan calls for loans to be restructured on various secured pieces of property, certain pieces of property to be abandoned to creditors and for the debtor to obtain a \$250,000 loan.

If the plan is stayed, substantial potential harm could result to debtor and other creditors.

### **4. Public Interest**

It would be inequitable to deny the benefits of the plan to the over 18 million dollars in creditors who accepted the plan to await an appeals process by one creditor, with little likelihood of success on the merits.

WHEREFORE, premises considered it is the Order of the Court that the motion of appellant, Bancfirst, for stay of the confirmation plan pending appeal is hereby DENIED.

IT IS SO ORDERED this 24<sup>th</sup> day of August, 1989.

  
\_\_\_\_\_  
H. DALE COOK  
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GREGORY G. DIXON, .....Plaintiff, )

v. )

NN INVESTORS LIFE )  
INSURANCE COMPANY, INC., )  
an Iowa corporation, .....Defendant. )

No. 88-C-1554-E

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 23 day of Aug, 1989, upon written application filed herein by Plaintiff, the Court, having examined such application and being fully advised in the premises, finds that a compromise settlement has been effected between the parties hereto and that the instant action should accordingly be dismissed pursuant to such application.

IT IS THEREFORE ORDERED by the Court that, pursuant to Plaintiff's said Application herein, the above-styled and numbered cause is hereby dismissed with prejudice to refiling.

S/ JAMES O. ELSON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 24 1989

JIMMIE C. PHOENIX,

Plaintiff,

vs.

WILLIAMS PIPELINE COMPANY,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 88-C-792-B

ORDER

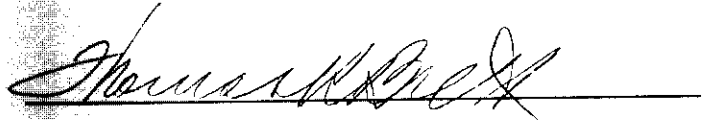
This matter comes before the Court upon Defendant's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. After an extension of deadlines regarding dispositive motions, Defendant filed its motion on July 19, 1989. Although Plaintiff's Response was due July 31, 1989, Plaintiff has yet to file either his Response to the Motion for Summary Judgment or an application for an extension of time in which to respond.

Local Rule 15(A) provides that a party opposing a motion for summary judgment shall file its brief in opposition within 15 days. Failure to comply with this Rule will constitute a waiver of the objection, and such failure to comply will constitute a confession of the matters raised by the motion. The undisputed facts in the Motion establish the Plaintiff only presented one claim within his discrimination charge to the EEOC, that being for an alleged violation of Title VII when he was suspended from work for five days. Plaintiff's other causes of action were not encompassed within the EEOC complaint and are not like or related to the single charge asserted and therefore should be dismissed. With regard to

Plaintiff's claim encompassed within the EEOC charge, the five day suspension, the facts establish that Plaintiff and a co-worker were suspended for five days because Plaintiff failed to perform a critical function in a pipeline order which could have resulted in the pipeline's rupture. These facts support Defendant's legitimate, non-discriminatory reason for Plaintiff's suspension. Plaintiff's failure to rebut these facts constitutes an admission pursuant to local Rule 15(A).

It is therefore ORDERED that Defendant's Motion for Summary Judgment be SUSTAINED and the case dismissed.

IT IS SO ORDERED, this 24 day of August, 1989.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA  
CLERK'S OFFICE  
UNITED STATES COURT HOUSE  
333 West Fourth Street, Room 411  
TULSA, OKLAHOMA 74103

JACK C. SILVER  
CLERK

*Entered  
as to FSLIC  
(918) 581-7796  
(FTS) 745-7796 only*

August 24, 1989

TO ALL COUNSEL OF RECORD:

IN RE: Guaranty Federal Savings v. First Tulsa Partners 88-C-1232-C

Please be advised that Chief Judge H. Dale Cook entered the following Minute Order in the above styled case:

The motion of the Federal Savings & Loan Insurance Corporation to dismiss is hereby granted, for the reasons stated in the Magistrate's Report and Recommendation filed on June 16, 1989.

Very truly yours,

JACK C. SILVER, CLERK

*Rosanne J. Miller*  
Deputy Clerk

CC:

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

J. L. KANE REAL ESTATE ASSOCIATES,  
INC., individually and d/b/a  
J. L. KANE REALTY ASSOCIATES, INC.,  
Plaintiff,

vs.

DAVID L. TOLIVER and CAROLYN L.  
TOLIVER,

Defendants.

AUG 23 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 89-C-520-C

JOURNAL ENTRY OF JUDGMENT

NOW on this 23 day of Aug, 1989, comes on for consideration the Motion for Default Judgment filed herein by Plaintiff, J. L. Kane Real Estate Associates, Inc., individually and d/b/a J. L. Kane Realty Associates, Inc. ("Kane").

This Court having duly considered the issues presented by Kane, and a decision having been duly rendered, finds as follows:

1. J. L. Kane Real Estate Associates, Inc. is a corporation incorporated under the laws of the State of New York, having its principal place of business in the State of New York.

2. Defendants David L. Toliver and Carolyn L. Toliver are individuals who reside in the State of Florida.

3. Jurisdiction is availing in this Court pursuant to the provisions of 28 U.S.C. §1331(a)(1) (West. Supp. 1989), since Kane and Defendants Toliver reside in differing states, and the matter in controversy exceeds, exclusive of interest and costs, the sum of Fifty Thousand and no/100 Dollars (\$50,000.00).

4. Venue over this action is proper in this District

pursuant to 28 U.S.C. §1331(a) (West. 1976), in that all of the claims and causes of action alleged herein arose in this District.

5. On or about December 31, 1986, Oakwold Properties, Inc. ("Oakwold") executed and delivered to Kane in Tulsa, Oklahoma, a certain Installment Note in the original principal sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) ("Note").

6. On or about February 13, 1987, Defendant David L. Toliver, as guarantor, executed and delivered in Tulsa, Oklahoma, a personal Guaranty to Kane ("Guaranty I"). Guaranty I, after making reference to the Note, states that "Guarantor [David Toliver] unconditionally and irrevocably guarantees to Kane the payment then due of all amounts described in such Note".

7. On or about February 13, 1987, Defendant Carolyn L. Toliver, as guarantor, executed and delivered in Tulsa, Oklahoma, a personal Guaranty to Kane ("Guaranty II"). Guaranty II, after making reference to the Note, states that "Guarantor [Carolyn Toliver] unconditionally and irrevocably guarantees to Kane the payment then due of all amounts described in such Note".

8. Oakwold is in default under the terms of the Installment Note, leaving an unpaid balance thereunder as of June 30, 1987, of Three Hundred Twenty-Six Thousand Seven Hundred Thirty and 08/100 Dollars (\$326,730.08), with interest continuing to accrue thereon under the terms of the Note, less interest payments made after June 30, 1987, in the total sum of Twenty Thousand Dollars (\$20,000.00).

9. Paragraph 5 of both Guaranty I and Guaranty II provides:

"5. Guarantor agrees that Kane may, at Kane's sole option, first look to the Guarantor upon any default under this Guaranty, or Kane may, at its option, seek payment from other sources before or concurrently with seeking payments from Guarantor."

10. Accordingly, this Court finds that Defendants David L. Toliver and Carolyn L. Toliver are indebted to Kane under their personal guarantees in the sum of Three Hundred Twenty-Six Thousand Seven Hundred Thirty and 08/100 Dollars (\$326,730.08), with interest continuing to accrue thereon from June 30, 1987, under the terms of the Note, less interest payments made after June 30, 1987, in the total sum of Twenty Thousand Dollars (\$20,000.00).

11. Additionally, Kane is entitled to recover from Defendants David L. Toliver and Carolyn L. Toliver its costs, including reasonable attorney fees, incurred in bringing this action.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff, J. L. Kane Real Estate Associates, Inc., have judgment against Defendants David L. Toliver and Carolyn L. Toliver in the sum of Three Hundred Twenty-Six Thousand Seven Hundred Thirty and 08/100 Dollars (\$326,730.08), plus interest thereon as provided under the terms of the Note from June 30, 1987, until date of judgment, less Twenty Thousand Dollars (\$20,000.00) in interest payments previously paid, post-judgment interest on the total at the rate of 7.75 % per annum from the date of judgment

until paid in full, plus all costs incurred by Plaintiff in bringing this action, including a reasonable attorney's fee.

DATED this 23 day of August, 1989.

(Signed) H. Dale Cook

---

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 23 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

AGNES LAZARUS,

Plaintiff,

vs.

No. 88-C-1322 B

EMBASSY SUITES, INC.,

Defendant and Third  
Party Plaintiff,

vs.

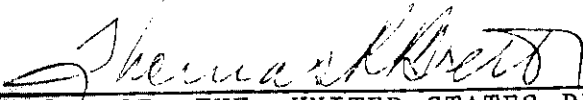
ART WILLIAMS, JR.,

Third Party Defendant.

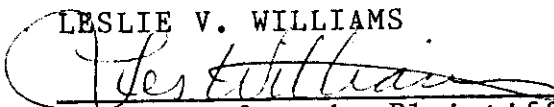
ORDER OF DISMISSAL

NOW on this 23<sup>rd</sup> day of August, 1989, upon the written application of the Plaintiff, Agnes Lazarus, and the Defendant and Third Party Plaintiff, Embassy Suites, Inc., for a Dismissal With Prejudice of the Complaint of Lazarus v. Embassy, and all causes of action therein, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of the parties and that said Complaint should be dismissed pursuant to said application.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action therein, be and the same hereby are dismissed with prejudice to any future action.

  
JUDGE OF THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

LESLIE V. WILLIAMS

  
Attorney for the Plaintiff

SCOTT D. CANNON

  
Attorney for the Defendant and Third  
Party Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

AUG 23 1989

MISSOURI PACIFIC RAILROAD COMPANY, )  
successor in interest TEXAS AND )  
PACIFIC RAILROAD COMPANY, )  
a foreign corporation, )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Plaintiff, )

v. )

Case No. 89-C-647-*CB*

JOHN HOLLIS MARTIN, )

Defendant. )

ORDER DISMISSING LAWSUIT WITHOUT PREJUDICE

Now on the 10th day of August, 1989, the Plaintiff's Motion for a Preliminary Injunction comes on for hearing before the Honorable Judge Brett. The Plaintiff appears by its attorney, Tom L. Armstrong, Tom L. Armstrong & Associates, and the Defendant appears in person, and the Court, being fully advised in the premises, finds that the lawsuit should be dismissed without prejudice on the condition that the Defendant, John Hollis Martin, agrees not to interfere in any way with the Plaintiff's or Plaintiff's licensee's use of Plaintiff's right-of-way that is at issue in this suit except through legal action in a court of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that this action is dismissed without prejudice on the condition that John Hollis Martin agrees not to interfere in any way with the Plaintiff's or Plaintiff's licensee's use of Plaintiff's right-of-way except through legal action in a court of law.

5/ THOMAS R. BRETT

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

EPOCH ENERGY CORPORATION )

Plaintiff, )

vs. )

No. 88-C-175-C ✓

UNITED PETROLEUM MANAGEMENT )  
RESOURCES, INC., )

Defendant. )

FILED

AUG 23 1989

Jack C. Smith  
U.S. DISTRICT COURT

D I S M I S S A L

THIS MATTER comes on for hearing upon the  
Stipulation for Dismissal previously filed herein by and on  
behalf of the Plaintiff, EPOCH ENERGY CORPORATION, and the  
Defendant, UNITED PETROLEUM MANAGEMENT RESOURCES, INC.

This Court, upon reviewing the file, being fully  
informed in the premises, FINDS that for good cause, the  
Complaint filed by the Plaintiff and the Cross-Claim filed  
by the Defendant should be dismissed with each of the  
parties hereto bearing their respective costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by  
this Court, that the Complaint previously filed herein by  
and on behalf of the Plaintiff, EPOCH ENERGY CORPORATION,  
and the Cross-Claim previously filed herein by and on behalf  
of the Defendant, UNITED PETROLEUM MANAGEMENT RESOURCES,  
INC., be dismissed with each of the parties hereto each  
bearing their respective costs.

  
DISTRICT JUDGE H. DALE COOK

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROSS E. SILVEY,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

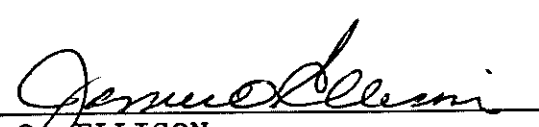
No. 88-C-1486-E ✓

**JUDGMENT**

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff Ross E. Silvey take nothing from the Defendant Allstate Insurance Company, that the action be dismissed on the merits, and that the Defendant Allstate Insurance Company recover of the Plaintiff its costs of action.

ORDERED this 22<sup>d</sup> day of August, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARILYN SLAY, as Personal  
Representative of the Estate of  
JAMES ALBERT "BERT" SLAY,  
Deceased, on behalf of The Estate  
of JAMES ALBERT "BERT" SLAY,  
Deceased; MARILYN L. SLAY,  
Surviving Spouse and Widow of  
JAMES ALBERT "BERT" SLAY;  
MARILYN L. SLAY, as Natural  
Mother and Next Friend of  
MELISSA F. SLAY and JAMES AARON  
SLAY, Minor Children of JAMES  
ALBERT "BERT" SLAY, Deceased;  
and JAMES H. SLAY and ANITA  
MAXINE SLAY, Surviving Parents  
of JAMES ALBERT "BERT" SLAY,  
Deceased,

Plaintiffs,

vs.

FORD MOTOR COMPANY,

Defendant.

Case No. 87-C-930-E

JUDGMENT

This action came on for trial before the court and a jury, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that the Plaintiffs Marilyn Slay, as Personal Representative of the Estate of James Albert "Bert" Slay, deceased, on behalf of the Estate of James Albert "Bert" Slay, deceased; Marilyn L. Slay, Surviving Spouse and Widow of James Albert "Bert" Slay; Marilyn L. Slay, as Natural Mother and Next Friend of Melissa F. Slay and James Aaron Slay, minor children of James Albert "Bert" Slay, deceased; and James H. Slay and Anita Maxine Slay, Surviving Parents of James Albert "Bert" Slay, deceased, take nothing, that the action be dismissed on the merits, and that

the Defendant Ford Motor Company recover of the Plaintiffs its costs of action.

DATED at Tulsa, Oklahoma, this 22 day of Aug., 1989.

**JAMES O. ELLISON**

---

**JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 22 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,  
Plaintiff,

-vs-

CHARLESETTA ROGERS,  
444 54 0984

Defendant,

CIVIL NUMBER 89-C-583 E

NOTICE OF DISMISSAL

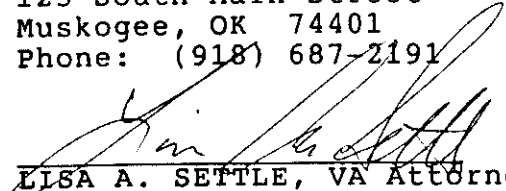
COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

UNITED STATES OF AMERICA

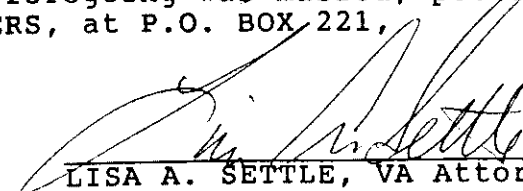
Herbert N. Standeven  
District Counsel  
Veterans Administration  
125 South Main Street  
Muskogee, OK 74401  
Phone: (918) 687-2191

By:

  
LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: CHARLESETTA ROGERS, at P.O. BOX 221, DEWEY, OK 74029.

  
LISA A. SETTLE, VA Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 22 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

MYLIAM R. ROGERS,  
444 54 0984

Defendant,

CIVIL NUMBER 89-C-583 E

DEFAULT JUDGMENT

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN DISTRICT OF OKLAHOMA, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, MYLIAM R. ROGERS, in the principal sum of \$2282.28, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$11.00. Future costs and interest at the legal rate of 7.75%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 22<sup>nd</sup> day of August, 1989.

U.S. DISTRICT COURT CLERK  
NORTHERN DISTRICT OF OKLAHOMA

By:

*H. Campbell*  
Deputy Clerk

104.01 *dst*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HGL SOFTWARE LIMITED,

Plaintiff,

vs.

No. 87-C-101-E ✓

AMERICAN BINARY TECHNOLOGIES,  
INC.,

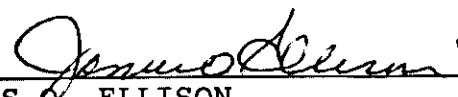
Defendant.

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 22<sup>d</sup> day of August, 1989.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

8

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

AUG 22 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ELWIN ALLEN HILL

Plaintiff,

v.

FRANK THURMAN, et al,

Defendant.

88-C-1671-B

**ORDER**


The Court has for consideration the Report and Recommendation of the United States Magistrate filed July 26, 1989 in which the Magistrate recommended that the Defendant's Motion to Dismiss be granted and the case dismissed.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the Defendant's Motion to Dismiss is granted and the case dismissed.

Dated this 22<sup>nd</sup> day of August, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LANDMARK SAVINGS BANK, F.S.B.,  
a Federally Chartered Savings  
Bank, formerly known as First  
Federal Savings and Loan  
Association of Hot Springs,

Plaintiff,

v.

DIVERSIFIED RESOURCES  
CORPORATION, formerly known as  
Stratford House Inns, Ltd.;  
GEORGE SHIPMAN; CLARA J. SHIPMAN;  
WESTERN NATIONAL BANK; FIRST  
NATIONAL BANK & TRUST COMPANY OF  
PONCA CITY, OKLAHOMA; BORG WARNER  
LEASING, a division of Borg Warner  
Acceptance Corporation; ICEMAKER  
SALES & SERVICE, INC.; EXCHANGE  
NATIONAL BANK; GUARANTY NATIONAL  
BANK; VICTOR FEDERAL SAVINGS AND  
LOAN ASSOCIATION; TWIN CITY  
SAVINGS BANK, F.S.B.; LUELLA  
BACKHAUS, COUNTY TREASURER, KAY  
COUNTY, OKLAHOMA; CHAIRMAN OF THE  
BOARD OF COUNTY COMMISSIONERS, KAY  
COUNTY, OKLAHOMA; JOHN CANTRELL,  
COUNTY TREASURER, TULSA COUNTY,  
OKLAHOMA; CHAIRMAN OF THE BOARD OF  
COUNTY COMMISSIONERS OF TULSA  
COUNTY, OKLAHOMA; UNITED STATES OF  
AMERICA; STATE OF OKLAHOMA ex rel.  
OKLAHOMA TAX COMMISSIONS; TEXAS  
INNS MOTEL; and LAKESHORE BANK,  
N.A.,

Defendants.

Case No. 88-C-1601-B ✓

FILED

AUG 21 1989 PA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

The Application and Supporting Brief for Order Determining  
Waiver of Objection and Granting Motion to Dismiss filed by the

defendant Federal Savings and Loan Insurance Corporation, in its capacity as Receiver for Twin City Savings, fsa ("FSLIC"), comes on for hearing this 10th day of August, 1989, pursuant to the special setting of the Court.

The Court finds that on July 6, 1989, the FSLIC filed its Application and Supporting Brief for Order Determining Waiver of Objection and Granting Motion to Dismiss (the "Application"). The Court further finds that Diversified Resources Corporation ("Diversified") has failed to file any response to the Application and in order to determine whether Diversified had any objection to the Application, this Court set this matter for hearing and mailed notice of this hearing to all counsel of record, including counsel Diversified, on July 28, 1989.

The Court finds that the FSLIC's Application sought the dismissal of the amended cross-claims filed against Twin City Savings, fsa, by Diversified. The Court further finds that Diversified has failed to respond. Accordingly, the Application is deemed confessed, pursuant to Local Rule 14(A), and the amended cross-claims filed against Twin City Savings, fsa, by the defendant Diversified Resources Corporation are dismissed with prejudice.

IT IS SO ORDERED this 21st day of August, 1989.

  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 21 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FLOYD R. HARDESTY, an  
individual,

Plaintiff,

v.

Case No. 89-C-413 B

BEAZER MATERIALS AND  
SERVICES, INC., a Delaware  
corporation, formerly known  
as Koppers Company, Inc.,

Defendant.

ORDER OF DISMISSAL

Pursuant to the Stipulation for Dismissal, this action is  
ordered dismissed with prejudice, each party to bear its own costs  
and fees herein.

Dated this 21st day of August, 1989.

S/ THOMAS R. BRETT

\_\_\_\_\_  
Thomas R. Brett

IN THE UNITED STATES DISTRICT COURT OR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

HAWKINSON, ROBERT L.

AUG 21 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Plaintiff(s),

vs.

No. 88-C-675-B

THERMAL INDUSTRIES, INC.

Defendant(s).

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 21 day of August, 1989.

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 21 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

KENDRICK, KIMBERLYN RAE

Plaintiff(s),

vs.

No. 87-C-844-B

HICKS COMMUNICATIONS PARTNERS  
A DELAWARE LIMITED PARTNERSHIP,  
d/b/a KAYI-FM 107, A HICKS  
COMMUNICATIONS, INC. STATION

Defendant(s).

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 21 day of August, 1989.

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 21 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CONTINENTAL TRAINING SERVICES,  
INC., d/b/a SUPERIOR TRAINING  
SERVICES,

Plaintiff,

vs.

Case No. 88-C-156-B

KATHRYN J. SMITH,


Defendant.

ADMINISTRATIVE CLOSING ORDER

The Plaintiff having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 21 day of AUGUST, 1989.

  
UNITED STATES DISTRICT JUDGE  
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 21 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JAMES H. BULLARD and COYWILLOW F.  
BULLARD,

Plaintiffs,

v.

COLLINS INDUSTRIES, INC., a New  
Jersey Corporation, a/k/a COLLINS  
COMPANY, LTD.,

Defendant.

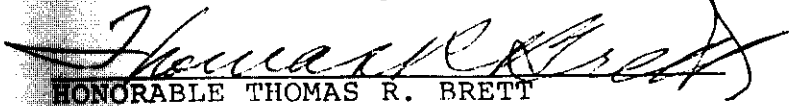
No. 86-C-732-B

ORDER OF DISMISSAL


NOW on this 21<sup>st</sup> day of August, 1989, came on to be  
considered the Joint Application For Dismissal, and the Court  
finds that all claims and issues between the parties herein have  
been settled and that the matter should be dismissed, with  
prejudice, and each party agrees to pay its own costs.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court  
that the above-captioned matter be and it is hereby dismissed  
with prejudice.

Signed and entered this 21 day of August, 1989.

  
HONORABLE THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM;

  
Bill V. Wilkinson  
Attorney for Plaintiffs

  
R. P. Redemann  
Attorney for Defendants

CP/jlh:HEN/BOD

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**AUG 21 1989**

PATTISON, T.W. and FRED MANNINO

Plaintiff(s),

vs.

No. 88-C-1496-B

PHILLIPS, GROVER

Defendant(s).

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 21<sup>ST</sup> day of August, 19 89.

  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

AUG 21 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

RON WILLHOITE,

Plaintiff,

vs.

TRANSWESTERN MINING COMPANY,  
a Nevada corporation,

Defendant.

Case No. 89-C-591-B

ORDER

Now on this 21st day of August, 1989, the captioned matter came before this Court on the stipulation of both Plaintiff and Defendant for dismissal with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. The Court, being fully advised in the premises and on consideration thereof hereby orders this matter to be dismissed with prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

8

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 18 1989 *alt*

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

AMERICAN NATIONAL PROPERTY )  
AND CASUALTY COMPANY, A )  
Foreign Corporation, )

Plaintiff, )

vs. )

*89-C-543-E*  
Case No. ~~65-89-0021~~

SHIRLEY SPECK, a/k/a )  
SHIRLEY BUERGER, RUSSELL )  
SPECK, a/k/a RUSSELL BUERGER )  
LONNIE LYNN BUERGER, natural )  
mother and next friend of )  
KAYLYN NICOLE BUERGER, A )  
Minor, and KATHRYN MARIE )  
BAUGH, natural mother and )  
next friend of KRYSTAL )  
GAYLE BAUGH, A Minor, )

Defendants. )

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, American National Property and Casualty Company, by and through its attorney, Randall A. Gill and hereby dismisses without prejudice its action **against** the following Defendants, Lonni Lynn Buerger, natural mother and next friend of Kaylyn Nicole Buerger, a minor and Kathryn Marie Baugh, natural mother and next friend of Krystal Gayle Baugh, a minor.

DATED this 18<sup>th</sup> day of August, 1989.

GILL and KEELEY  
Attorneys for the Plaintiff

*[Signature]*  
RANDALL A. GILL, OBA #10309  
1400 South Boston Building


Suite 680  
Tulsa, Oklahoma 74119  
918/587-1988

CERTIFICATE OF MAILING

I, Randall A. Gill hereby certify that on the date of filing herein, a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to:

Shirley Speck  
Russell Speck  
4935 S. 73rd East Avenue  
Tulsa, Oklahoma 74145

Mr. Richard D. Gibbon  
1611 South Harvard  
Tulsa, Oklahoma 74112

  
\_\_\_\_\_  
RANDALL A. GILL

IN THE UNITED STATES DISTRICT COURT  
WITHIN AND FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 17 1989

Jack C. Shaw, Clerk  
U.S. DISTRICT COURT

LEE JOICE and HELEN JOICE,  
individually,

Plaintiffs,

vs.

Case No 89-C-308-E

WAL-MART STORES, INC., and  
TEST-RITE PRODUCTS, INC.,

Defendants.

ORDER OF DISMISSAL

NOW on this 17<sup>th</sup> day of August, 1989, this matter comes on for hearing on Plaintiff's Application for Order of Dismissal, and the Court, being first duly apprised, and upon agreement of counsel hereby,

ORDERS, ADJUDGES AND DECREES that the above cause be and is hereby dismissed without prejudice.

  
\_\_\_\_\_  
Judge of the District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ROY C. WILSON,  
C 28 781 105

Defendant,

CIVIL NUMBER 89-C-501 E

**FILED**

AUG 17 1989

NOTICE OF DISMISSAL

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

UNITED STATES OF AMERICA

Herbert N. Standeven  
District Counsel  
Veterans Administration  
125 South Main Street  
Muskogee, OK 74401  
Phone: (918) 687-2191

By:

  
LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: ROY C. WILSON, at 10159 East 32nd St., Apt. A, Tulsa, OK 74146.

  
LISA A. SETTLE, VA Attorney

FILED

AUG 17 1989 *dt*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Elmer, Clerk  
U.S. DISTRICT COURT

HENRY L. COLLIER,

Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD  
COMPANY,

No. 88-C-1362E ✓

ORDER of Dismissal

Upon being advised that the issues in this case have been fully settled, and upon stipulation of the parties, plaintiff's cause of action is hereby ordered dismissed with prejudice.

DATED this 17th day of August, 1989.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NATIONAL HYDROHOIST COMPANY,  
INC,

Plaintiff,

vs.

HYDROHOIST OF FLORIDA, INC.,

Defendant.

No. 89-C-118-B

FILED

AUG 17 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

OF  
STIPULATION FOR DISMISSAL OF PLAINTIFF'S COMPLAINT

The Plaintiff, National Hydrohoist Company, Inc., stipulates its Complaint against Defendant, Hydrohoist of Florida, Inc., may be dismissed with prejudice to the bringing of any future action for the same because said claim has been fully settled and compromised.

Dated this 17th day of August, 1989.

GOREE, KING & RUCKER, INC.  
and F. MACK GREEVER

By: Jack Y. Goree  
Jack Y Goree, OBA #3481

Southern Oaks Office Park  
7335 South Lewis, Suite 306  
Tulsa, Oklahoma 74136  
(918) 496-3366

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that on this 17th day of August, 1989, a true and correct copy of the above and foregoing STIPULATION FOR DISMISSAL OF PLAINTIFF'S COMPLAINT was mailed to Dale J. Briggs, 1717 East 15th Street, P.O.D. 4566, Tulsa, Oklahoma 74159-0566; with sufficient postage thereon fully prepaid.

Jack Y. Goree  
Jack Y. Goree

IN THE UNITED STATES DISTRICT COURT FOR THE  
*Northern*  
EASTERN DISTRICT OF OKLAHOMA

FILED

AUG 17 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CHARLES EDWARD CUNNINGHAM and  
DOLLIE L. CUNNINGHAM,

Plaintiffs,

vs.

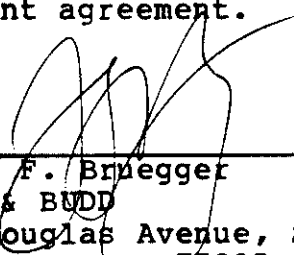
OWENS-CORNING FIBERGLAS  
CORPORATION, et al.

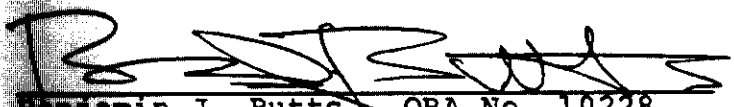
Defendants.

*87-366-C*  
No. 87-366-C

STIPULATION OF DISMISSAL

Come now the parties, Charles Edward Cunningham and Dollie L. Cunningham, plaintiffs, and Crown Cork & Seal Company, Inc., a defendant, and stipulate to the dismissal of the above-referenced matter with prejudice for the reason and upon the ground that the parties have entered into a settlement agreement.

  
\_\_\_\_\_  
Joseph F. Bruegger  
BARON & BUDD  
8333 Douglas Avenue, Suite 1000  
Dallas, Texas 75225  
214/369-3605  
Attorney for Plaintiffs

  
\_\_\_\_\_  
Benjamin J. Butts OBA No. 10228  
SHORT BARNES WIGGINS MARGO & ADLER  
1400 American First Tower  
Oklahoma City, Oklahoma 73102  
405/232-1211  
Attorney for Defendant,  
Crown Cork & Seal Company, Inc.

Certificate of Service

On this \_\_\_\_\_ day of July, 1989, true and correct copies of the within and foregoing Stipulation of Dismissal were mailed, with sufficient postage fully prepaid thereon, to the following counsel of record:

Mr. Mike Iola  
Ungerman, Conner & Little  
Post Office Box 74101  
Tulsa, OK 74101  
Attorney for Plaintiffs

Mr. William S. Hall  
Feldman, Hall, Frandon, Woodard & Farris  
1400 Park Centre  
525 South Main  
Tulsa, OK 74103  
Attorney for Combustion Engineering

Mr. John F. McCormick, Jr.  
Pray, Walker, Jackman, Williamson & Marlar  
900 Oneok Plaza  
Tulsa, OK 74103  
Attorney for Wellington Group

Mr. Alfred K. Morlan  
Jones, Givens, Gotcher, Bogan & Hilborne  
3800 First National Tower  
Tulsa, OK 74103  
Attorney for Raymark Industries, Inc.

Mr. Joe Michael Russell  
Smith, Ralston, Russell & Wright  
302 North Market Street  
Suite 501  
Dallas, TX 75202  
Attorney for Eagle-Picher

  
Benjamin J. Butts

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
AUG 16 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

IN RE:

MOBILE VIDEO, INC., an  
Oklahoma corporation,

Debtor,

AMERICAN BANK AND TRUST  
COMPANY, an Oklahoma banking  
corporation,

Plaintiff,

vs.

DAVID A. SIMMONS, et al.,

Defendants.

(Tulsa County District Court  
Case No. CJ-87-4203)

Consolidated with:

KENDALWOOD CORPORATION, an  
Oklahoma corporation,

Plaintiff,

vs.

AMERICAN BANK AND TRUST  
COMPANY, an Oklahoma banking  
corporation, DAVID A. SIMMONS  
and CHERYL R. SIMMONS,  
individually,

Defendants.

(Tulsa County District Court  
Case No. CJ-87-7221)

Case No. 89-C-367-C

AGREED ORDER OF REMAND

This cause having come before the Court upon the Report  
and Recommendations of the United States Bankruptcy Court for  
the Northern District of Oklahoma pursuant to Bankruptcy Rule

9027(e), and the Debtor, Mobile Video, Inc., and American Bank and Trust Company having stipulated and agreed to an Order of Remand, it is

ORDERED AND ADJUDGED that, Mobile Video, Inc., having withdrawn its objections to the Report and Recommendations of the Bankruptcy Court, the Report and Recommendations of the United States Bankruptcy are hereby accepted, ratified and approved. It is further

ORDERED AND ADJUDGED that Case No. CJ-87-7227 styled Kendalwood Corporation v. American Bank and Trust Company, et al., be and the same hereby is remanded to the District Court of Tulsa County. It is further

ORDERED AND ADJUDGED that all causes of action in Case No. CJ-87-4203 on the part of any party, excepting the causes of action of American Bank and Trust Company for foreclosure of its mortgages, be and the same hereby are remanded to the District Court of Tulsa County, it being the Order of the Court that the mortgage foreclosure causes of action of American Bank and Trust Company shall be retained by the United States Bankruptcy Court and not remanded to the District Court of Tulsa County. It is further

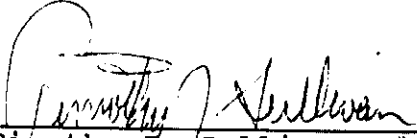
ORDERED that the Clerk of the United States District Court is hereby directed to prepare such transmittals and extracts of pleadings as are necessary to effectuate this Order.

DONE AND ORDERED this 16 day of August,  
1989.

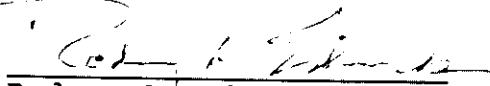
(Signed) H. Dale Cook

CHIEF UNITED STATES DISTRICT  
JUDGE

APPROVED AS TO FORM  
AND CONTENT

  
Timothy J. Sullivan, #8759  
1443 South Norfolk  
Tulsa, Oklahoma 74120  
(918) 592-3100

Attorney for Mobile Video, Inc.  
Debtor

  
Rodney A. Edwards, #2646  
3800 First National Tower  
Tulsa, Oklahoma 74103  
(918) 581-8200

Attorneys for American Bank and  
Trust Company

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 16 1989

John W. Smith, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BONNIE L. HARTMAN, a/k/a  
BONNIE HARTMAN,

Defendant.

) CIVIL ACTION NO. 88-C-1458-C

DEFAULT JUDGMENT

This matter comes on for consideration this 16 day  
of Aug, 1989, the Plaintiff appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Catherine J. Depew, Assistant United States  
Attorney, and the Defendant, Bonnie L. Hartman, a/k/a Bonnie  
Hartman, appearing not.

The Court being fully advised and having examined the  
court file finds that Defendant, Bonnie L. Hartman, a/k/a Bonnie  
Hartman, acknowledged receipt of Summons and Complaint on  
November 4, 1988. The time within which the Defendant could  
have answered or otherwise moved as to the Complaint has expired  
and has not been extended. The Defendant has not answered or  
otherwise moved, and default has been entered by the Clerk of  
this Court. Plaintiff is entitled to Judgment as a matter of  
law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the  
Plaintiff have and recover judgment against the Defendant,

Bonnie L. Hartman, a/k/a Bonnie Hartman, for the principal amount of \$2,500.00, plus accrued interest of \$556.21 as of August 22, 1988, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.75 percent per annum until paid, plus costs of this action.

(Signed) H. Dale Cook

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UNITED STATES DISTRICT JUDGE

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FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

AUG 16 1989

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

MORTGAGE CLEARING CORPORATION,  
a corporation,

Plaintiff,

vs.

VEREX ASSURANCE, INC., et al.,

Defendants.

Case No. 87-C-777-P ✓

JOURNAL ENTRY OF JUDGMENT

NOW on June 2, 1989, there came on for consideration before the Court the Motion of Verex Assurance, Inc., for Summary Judgment, the Plaintiff appearing by and through its counsel, Jack I. Gaither and Bruce D. Gaither, and the Defendant, Verex Assurance, Inc., appearing by and through its counsel, Doerner, Stuart, Saunders, Daniel & Anderson, by James P. McCann and Kathy R. Neal. The Court, after hearing argument from counsel and considering all Briefs and Affidavits submitted in support of and in opposition to the Verex Motion for Summary Judgment, provisionally granted Verex's Motion for Summary Judgment as to the bad-faith punitive damage claim, indicating that a subsequent, formal order would be submitted by the Court. Additionally, the Court determined to conduct an evidentiary hearing on June 5, 1989, on the subject of the entitlement of Mortgage Clearing Corporation to its attorneys' fees and for purposes of taking evidence to determine the proper amount of the attorneys' fees should the

Court determine that Mortgage Clearing Corporation was lawfully entitled to such fees. On June 5, 1989, in accordance with the Court's earlier rulings, a hearing was held before the Court, Mortgage Clearing Corporation appearing by and through its counsel, Jack I. Gaither and Bruce D. Gaither, and the Defendant, Verex Assurance, Inc., appearing by and through its counsel, Doerner, Stuart, Saunders, Daniel & Anderson, by James P. McCann and Kathy R. Neal. The Court, at the hearing on June 5, 1989, heard evidence by way of Affidavits submitted by various counsel as well as the live testimony of F.L. Walker, Jack I. Gaither, and Bruce D. Gaither, and also heard argument of both counsel. Following the conclusion of the hearing on June 5, 1989, the matter was submitted to the Court for deliberation.

After consideration of all of the argument, evidence, and briefs of counsel, referred to above, the Court, on August 2, 1989, entered its Order Granting Summary Judgment on Plaintiff's Punitive Damages Claim and Denying Plaintiff's Request for Attorney Fees, which Order is expressly incorporated herein by reference, granting the Verex Motion for Summary Judgment, both denying the entitlement of Mortgage Clearing Corporation to pursue a punitive damage claim and denying Mortgage Clearing Corporation's request for attorney fees, all for the reasons more fully indicated in the Order filed on August 2, 1989.


IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment of Verex Assurance, Inc., be and is

hereby granted and that Mortgage Clearing Corporation is not entitled to pursue any claim for bad-faith punitive damages and, further, is not entitled to an award of any attorney's fees.

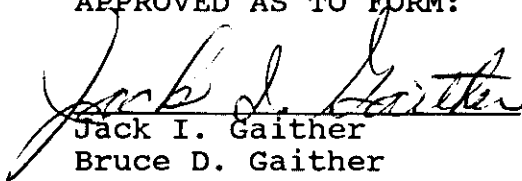
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, in light of the foregoing ruling, that the request of Mortgage Clearing Corporation for the award of its attorney fees be and is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the foregoing determinations of the Motion for Summary Judgment, having determined all of the issues remaining in the case, this Order shall represent a final Order of the Court, fully determining all issues remaining and outstanding between the parties, and the Clerk of this Court is directed to administratively close this case.

IT IS SO ORDERED this 9th day of August, 1989.

  
Layn R. Phillips  
United States District Judge

APPROVED AS TO FORM:

  
Jack I. Gaither  
Bruce D. Gaither  
500 West 7th Street  
Suite 100  
Tulsa, Oklahoma 74119

Attorneys for  
Mortgage Clearing Corporation

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By 

James P. McCann

Kathy R. Neal

1000 Atlas Life Building

Tulsa, Oklahoma 74103

(918) 582-1211

Attorneys for  
Verex Assurance, Inc.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TRAVIS H. ANDERSON, a/k/a  
Travis Howard Anderson, a/k/a  
Travis Anderson,

Defendant.

CIVIL ACTION NO. 89-C-0017-C

AUG 16 1989  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

DEFAULT JUDGMENT

This matter comes on for consideration this 16 day  
of Aug, 1989, the Plaintiff appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Catherine J. Depew, Assistant United States  
Attorney, and the Defendant, Travis H. Anderson, a/k/a Travis  
Howard Anderson, a/k/a Travis Anderson, appearing not.

The Court being fully advised and having examined the  
court file finds that Defendant, Travis H. Anderson, a/k/a  
Travis Howard Anderson, a/k/a Travis Anderson, acknowledged  
receipt of Summons and Complaint on January 21, 1989. The time  
within which the Defendant could have answered or otherwise  
moved as to the Complaint has expired and has not been extended.  
The Defendant has not answered or otherwise moved, and default  
has been entered by the Clerk of this Court. Plaintiff is  
entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the  
Plaintiff have and recover judgment against the Defendant,

Travis H. Anderson, a/k/a Travis Howard Anderson, a/k/a Travis Anderson, for the principal amount of \$611.70, plus accrued interest of \$25.32 as of October 17, 1988, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.75 percent per annum until paid, plus costs of this action.

(Signed) H. Dale Cook

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UNITED STATES DISTRICT JUDGE

cen